153 U.S. 465

# RECORD, CASE No. 14,316.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1892.**

TERM No., ~~532~~. 278

MARTHA GROVES, WILLIAM J. GROVES, AND THOMAS A. POGUE, ADMINISTRATOR OF ROSETTA RHEA, DECEASED, APPELLANTS,

*vs.*

GEORGE W. SENTELL, MRS. FANNIE B. RANDOLPH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

**FILED OCTOBER 17, 1890.**

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*vs.*

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

GEORGE W. SENTELL, Appellee,
*versus*
MARTHA and WILLIAM J. GROVES, Appellants, and Fanny B. Randolph & W. J. McLean, Executor, &c. } No. 11376. In Equity.

E. M. Hudson, Esquire, for G. W. Sentell.
Merrick & Merrick, Esquires, for Mrs. Fanny B. Randolph.
E. Howard McCaleb, Esquire, for Mrs. Dora Stark.
Farrar, Jonas & Kruttschnitt, Esquires, for W. B. McLean, executor.
W. S. Benedict, Esquire, for Martha and William J. Groves.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1890.

*Transcript of Appeal.*

1 Circuit Court of the United States, Eastern District of Louisiana.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } In Equity. No. 11376.

*Bill of Interpleader. Filed May* 29, 1886.

To the judges of the circuit court of the United States for the eastern district of Louisiana:

George W. Sentell, of the city of New Orleans and a citizen of the State of Louisiana, brings this his bill of interpleader against Martha Groves, of —— and a citizen of the State of Indiana; William J. Groves, of —— and a citizen of the State of Ohio; Fanny B. Randolf, of Lexington and a citizen of the State of Virginia, and William B. McLean, liquidator of the partnership of G. W. Sentell & Company, formerly composed of George W. Sentell and Benjamin Conyers, now in liquidation, and testamentary executor of said Benjamin Conyers, deceased, of the city of New Orleans and a citizen of the State of Louisiana; and thereupon your orator complains and says that on the first day of March, 1884, at a sale made by the sheriff of the parish of Avoyelles, in the State of Louisiana, in the suit of G. W. Sentell *et al.* against Fanny B. Randolf *et al.*, No. 7049 of the docket of the twelfth district court for the parish of Avoyelles, your orator became the purchaser of the following-described prop-
2 erty, to wit:

1st. A certain tract or parcel of land, together with the

buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clear and the public road leading from Holmesville to Marksville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley, others, and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Fanny B. Randolf.

2nd. An *individual* half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven and the north half of southwest quarter of said section twenty-seven, the northwest quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggre-
3 gate nine hundred and thirty acres, being the property described in the sheriff's deed hereto annexed as Exhibit No. 1.

Your orator further says that in becoming the purchaser of said described property, which was sold at the instance of said G. W. Sentell *et al.* in the suit aforesaid, in the parish of Avoyelles, to enforce the payment of a debt due to them by the said Fanny B. Randolf, and secured by a second mortgage by her granted to Johnson & Goodrich, which debt and mortgage were duly assigned and transferred to said G. W. Sentell & Company, in liquidation, with full subrogation to their own rights thereunder by said Johnson & Goodrich, your petitioner did, as in law he was bound to do, retain in his hands as a part of the purchase price of said property a sufficient sum to pay the amount of a previous and first mortgage which appeared from the records to exist upon said property and other property adjoining, being then about $6,037.12, being the mortgage apparently created by an act in favor of Mrs. Rosetta Rhea, executed January 11th, 1868, by the said Fanny B. Randolf, then wife of Christopher M. Randolf, and by him thereto authorized, and Dora Lambeth, now wife of Theodore O. Stark, before Edouard de Generes, notary public for said parish of Avoyelles and State of Louisiana, as the whole more fully will appear from reference to an authentic copy of said act of mortgage from Fanny B. Randolf to Johnson & Goodrich, marked Exhibit No. 2, a certified copy of the act of subrogation and assignment from said Johnson & Goodrich to said G. W. Sentell & Company, in liquidation, marked Exhibit No. 3, and an authentic copy of said apparent act of mortgage to Mrs. Rosetta Rhea, marked Exhibit No. 4.

4. Your orator further says that the property described in said Exhibit No. 4 was divided between the said Fanny B. Randolf and Dora Lambeth by act under private signature on the 9th day of January, 1873, the said Fanny B. Randolf becoming thereby the owner of the property so purchased by your orator at said sheriff's sale, and the said Dora Lambeth becoming thereby the owner of the remainder thereof, as from reference to a certified copy of said act of division and partition, marked Exhibit No. 5, more fully will appear.

And your orator further says that the said defendants, Martha Groves and William J. Groves, claiming to be the sole residuary legatees of the said Rosetta Rhea, have instituted a suit at law against your orator in this honorable court for the sum of $4,873, with interest thereon at the rate of eight per cent. per annum from March 5th, 1884, aggregating $5,743.46 at this date, being the amount of the funds retained by your orator in his hands as part of the purchase price of said property so purchased at sheriff's sale aforesaid to satisfy the said apparent mortgage in favor of said Rosetta Rhea and described in the act marked Exhibit No. 4, as from reference to the record in suit No. 11293 of the docket of this honorable court, entitled Martha Groves *et al. vs.* G. W. Sentell, marked Exhibit No. 6, more fully will appear.

Your orator further says that since the institution of said suit in this honorable court, shown by Exhibit No. 6, the said Fanny B. Randolf, through her attorneys and solicitors, Merrick, Foster and Merrick, has given notice to your orator in writing, under date
5 of April 9th, 1886, not to pay the said sum sued for to the said Martha Groves and William J. Groves, and claiming as her own the money retained by your orator as part of the purchase price of and secured by mortgage on the property so purchased as aforesaid by your orator at said sheriff's sale, as more fully will appear from reference to said written notice, marked Exhibit No. 7.

Your orator further says that since the institution of said suit, as shown by Exhibit No. 6, the said William B. McLean, as liquidator of said partnership of G. W. Sentell & Company, in liquidation, and as executor of said Benjamin Conyers, deceased, has given notice in writing to your orator, under date of May 1st, 1886, not to pay said sum sued for to the said Martha Groves and William J. Groves, claiming the whole of said sum as belonging to said G. W. Sentell & Company, in liquidation, which was so retained by your orator in his hands as part of the purchase price of the property so purchased by your orator at sheriff's sale aforesaid, as from said notice, marked Exhibit No. 8, more fully will appear.

And your orator further says that he has always been ready and willing to pay the said money, to wit, $5,743.46, if he could do so safely, and is now ready and willing to pay it and offers to pay the same into this honorable court.

To the end, therefore, that the defendants may answer the premises, and that the defendants may be decreed to interplead and settle and adjust between themselves their right or claim to or in the money due or payable under the said apparent mortgage set forth

in Exhibit No. 4, your orator being ready and willing and
6 hereby offering to pay the money due and payable under the same into this honorable court or to such of the said defendants as this honorable court may determine to be entitled thereto, and that the said defendants, Martha Groves and William J. Groves, may be restrained by the order and injunction of this honorable court from prosecuting the said action so commenced by them as aforesaid against your orator, and that all the said defendants may be respectively restrained by the order and injunction of this honorable court from prosecuting or commencing any other action or actions or legal proceeding or proceedings against your orator for the recovery of the said money due or to become due or payable under the said mortgage to Rosetta Rhea or any part thereof or otherwise concerning the matters aforesaid, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to your honor shall seem meet, may it please your honor to grant unto your orator a writ of subpœna to be directed to the said Martha Groves, William J. Groves, Fanny B. Randolf, and William B. McLean, liquidator of the partnership of G. W. Sentell & Company, in liquidation, and testamentary executor of Benjamin Conyers, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as shall seem agreeable to equity and good conscience.

Your orator further says that all and singular the allega-
7 tions of this bill are true to the best of his knowledge and belief.

(Signed) G. E. SENTELL.
E. M. HUDSON,
*Solicitor for Plaintiff.*

U. S. Circuit Court for the Eastern Dist. In Equity.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

I, George W. Sentell, the above-named plaintiff, make oath and say that the bill hereunto annexed is not filed by me in collusion with any or either of the defendants in the bill named, but such bill is filed by me of my own accord for relief in this honorable court.

(Signed) G. W. SENTELL.

Subscribed and sworn before me this 19th day of May, 1886.

(Signed) F. KIRCHNER,
[SEAL.] *Not. Pub.*

Certificate of clerk, see page 10.

*Order on Bill of Interpleader. Entered and Filed May* 29, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

8 Upon consideration of the bill of interpleader herein filed by the plaintiff, together with the exhibits thereto annexed and the certificate of the clerk that plaintiff has deposited and paid into this court the sum of five thousand seven hundred and forty-three $\frac{46}{100}$ dollars ($5,743.46), and of the affidavit of plaintiff annexed to said bill of interpleader it is ordered that a restraining order issue herein restraining said defendants, Martha Groves and William J. Groves, from prosecuting the action at law by them begun in this court, No. 11293 of the docket of this court, and restraining them and the other defendants, Fanny B. Randolf and William B. McLean, as liquidator of the firm of G. W. Sentell & Co. and testamentary executor of Benjamin Conyers, deceased, from prosecuting or commencing any other action or actions or legal proceeding or proceedings against the said G. W. Sentell, plaintiff, or otherwise concerning the matters in said bill of interpleader alleged for the recovery of the money due or to become due and payable under the mortgage from Fanny B. Randolf and Dora Lambeth, wife of Theodore Starke, to Rosetta Rhea in said bill of interpleader set forth until the hearing and decision upon the order to show cause herein.

It is further ordered that said defendants do interplead herein and settle and adjust their right or claim to or in the said money due or payable under the said mortgage to Rosetta Rhea, and that the right be reserved to plaintiff to have his proper costs taxes against the fund so deposited in court, both in said action at law and in this cause.

9 And the parties made defendants and required to interplead herein to show cause on June 5th, A. D. 1886, why there should not be an injunction granted according to the prayer of the bill of complaint, which is ordered to be filed.

May 29, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

*Marshal's Return.*

Received May 31, 1886, by the U. S. marshal, and on the 31st May, 1886, I served true copies of the within rule *nisi* and order on Martha Groves by handing same to Mr. W. S. Benedict in person, who accepted service of same as her attorney.

Wm. J. Groves, by handing same to Mr. W. S. Benedict in person, who accepted service of same as his attorney.

Mrs. Fanny B. Randolph, by handing same to Judge E. T. Merrick in person, who accepted service of same as her attorney, and on the 1st of June, 1886, I served a true copy of the within rule *nisi* and order on Wm. B. McLean, as liquidator of the firm of G.

W. Sentell &. Co. and testamentary executor of Benjamin Conyers, deceased, by handing same to Capt. E. H. Farrar in person, who accepted service of same as attorney for Wm. B. McLean, liquidator of the firm of G. W. Sentell & Co. and testamentary executor of Benj. Conyers, deceased.

(Signed) R. B. PLEASANTS, *U. S. M'l*,
By JNO. E. LIVAUDAIS, *D'y.*

10 *Certificate of Clerk Showing Deposit. Filed May* 29, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

I hereby certify that G. W. Sentell, the plaintiff in the above-entitled cause, has this 29th day of May, 1886, deposited in my hands as clerk of this hon. court the sum of five thousand seven hundred and forty-three $\frac{46}{100}$ dollars upon filing of his bill of interpleader herein.

(Signed) E. R. HUNT, *Clerk.*

11 *Restraining Order. Issued to Martha Groves* 31*st May,* 1886.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

The President of the United States to Martha Groves, Greeting:

Whereas it has been represented to us, in our said circuit court, on the part of G. W. Sentell, in a bill of interpleader in equity lately against you and each of you touching certain matters and things therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you and each of you are required to show cause on the 5 day of June, 1886, why an injunction should not issue as prayed for in said bill of interpleader; and whereas the said judge has granted and allowed an order restraining you and each of you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of interpleader:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Martha Groves,
12 your agents, attorneys, and servants, and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of you absolutely refrain and desist from prosecuting the action at law begun by you and each of you

in this court, No. 11293 of the docket of this court, and that you and each of you absolutely refrain and desist from prosecuting or commencing any other action or actions or legal proceeding or proceedings against the said G. W. Sentell, plaintiff, or otherwise concerning the matters in said bill of interpleader alleged for the recovery of the money due or to become due and payable under the mortgage from Fanny B. Randolph and Dora Lambeth, wife of Theodore Stache, to Rosetta Rhea, in said bill of interpleader set forth, until the hearing and decision upon the order to show cause herein.

And that you, the said Martha Groves, your agents, attorneys, and servants, and each of you remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

*Marshal's Return.*

Received May 31, 1886, by the U. S. marshal, and on the 31st May, 1886, I served a true copy of within restraining order on Mrs. Martha Groves, defendant herein, by handing same to Mr.
13 W. S. Benedict in person, who accepted service of same as attorney for Mrs. Martha Groves.

(Signed) R. B. PLEASANTS, *U. S. M'l,*
By JNO. E. LIVAUDAIS, *D'y.*

14 *Restraining Order. Issued to Wm. Groves 31st May,* 1886.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

The President of the United States to Wm. J. Groves, greeting:

Whereas it has been represented unto us, in our said circuit court, on the part of G. W. Sentell, in a bill of interpleader in equity lately exhibited against you and each of you touching certain matters and things therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you and each of you are required to show cause on the 5 day of June, 1886, why an injunction should not issue as prayed for in said bill of interpleader; and whereas the said judge has granted and allowed an order restraining you and each of you immediately and forth-

with and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of interpleader:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Wm. J. Groves,
15 your agents, attorneys, and servants and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of you absolutely refrain and desist from prosecuting the action at law begun by you and each of you in this court, No. 11293 of the docket of this court, and that you and each of you absolutely refrain and desist from prosecuting or commencing any other action or actions or legal proceeding or proceedings against the said G. W. Sentell, plaintiff, or otherwise concerning the matters in said bill of interpleader alleged for the recovery of the money due or to become due and payable under the mortgage from Fanny B. Randolph and Dora Lambeth, wife of Theodore Stache, to Rosetta Rhea, in said bill of interpleader set forth, until the hearing and decision upon the order to show cause herein.

And that you, the said Wm. J. Groves, your agents, attorneys, and servants and each of you remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

*Marshal's Return.*

Received May 31, 1886, by the U. S. marshal, and on the 31st —
May, 1886, I served a true copy of within restraining order on Wm.
J. Groves, defendant herein, by handing same to Mr. W. S.
16 Benedict in person, who accepted service of same as attorney for William J. Groves.

(Signed) R. B. PLEASANTS, *U. S. M'l,*
By JNO. E. LIVAUDAIS, *D'y.*

*Hearing and Submission of Rule for Injunction.*

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, SATURDAY, *June* 5, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause came on for hearing on the application of the complainant for an injunction herein, and after hearing argument from

counsel for the respective parties the matter was submitted to the court upon the evidence this day offered and the court took time to consider.

17 *Appearance of Wm B. McLean.*

Extract from the Chancery Order Book.

THURSDAY, *June* 10, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES & *al.* } No. 11376.

And now comes Farrar & Kruttschnitt, solicitors, and enter an appearance for W. B. McLean, liquidator of the partnership of G. W. Sentell & Co. and testamentary executor of Benjamin Conyers.

*Order: Injunction Granted.*

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, THURSDAY, *June* 10, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause came on to be heard on the application of the complainant for an injunction and was argued by counsel. On consideration whereof it is ordered that an injunction *pendente*
18 *lite* issue herein, enjoining and inhibiting the said defendants, their counsellors, attorneys, solicitors, officers, and agents and each of them, in manner and form and to the extent prayed for in said complainant's bill of interpleader.

*Motion of Mrs. M. A. Groves to Withdraw Money from Registry.*

Extract from the Minute Book.

THURSDAY, *June* 10, 1886.

G. W. SENTELL
*vs.*
Mrs. M. A. GROVES *et als.* } No. 11376.

On motion of W. S. Benedict, of counsel for Mrs. M. A. Groves *et als.*, made defendants herein, and on suggesting a preliminary injunction issued herein, that the funds in contest are on deposit in the register, and that from the showing before the court same belong to your movers—

It is ordered that complainant, through his counsel, E. M. Hudson, show cause on Saturday, 12 inst., at 10 a. m., why movers should not be permitted to withdraw the same on giving bond in the amount thereof, with surety to be approved by the court, without prejudice to any of their rights in the premises.

*Submission of Rule.*

Extract from the Minute Book, April Term, 1886.

19 NEW ORLEANS, SATURDAY, *June* 12, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
Mrs. M. A. GROVES *et als.* } No. 11376.

The rule of the defendants taken in this cause for the delivery to them of funds in the registry of the court came on this day to be heard and was argued by counsel for the parties respectively and submitted and the court took time to revise.

*Order: Rule to Withdraw Money Refused.*

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, MONDAY, *June* 14, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs*
Mrs. M. A. GROVES *et als.* } No. 11376.

The rule herein, filed on the 10th of June, 1886, to withdraw the funds in contest on deposit in the register upon giving bond in the amount thereof, with surety to be approved by the court,
20 came on to be heard and was argued by counsel and submitted; whereupon and upon consideration thereof it is now ordered that the said motion of the defendants be, and the same is hereby, refused.

*Appearance of Martha Groves and William J. Groves.*

Extract from the Chancery Order Book.

MONDAY, *July 5th*, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES & *al.* } No. 11376.

And now come Martha Groves and William J. Groves, defendants, by their solicitors, W. S. Benedict and Henry Renshaw, and enter appearance to the bill of interpleader herein.

*Appearance of Mrs. Fanny B. Randolph.*

Extract from the Chancery Order Book.

MONDAY, *July* 5, 1886.

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

In this case the defendant Mrs. Fanny B. Randolph comes by Merrick, Foster & Merrick, her solicitors, and enters her appearance in this cause.

21 *Demurrer of Martha Groves and William J. Groves. Filed August 2nd*, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

The demurrer of Martha Groves and of William J. Groves, defendants, to the bill of interpleader of George W. Sentell, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth, do demur to said bill, and for cause of demurrer show that complainant has not by his said bill made such a case as entitles him to the relief prayed as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in such bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) W. S. BENEDICT, *Solicitor.*
H'Y RENSHAW,
*Of Counsel for Defendants.*

22 UNITED STATES OF AMERICA, } ss:
*Eastern District of Louisiana,* }

Henry Renshaw, of counsel in the above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

(Signed) H'Y RENSHAW.

Sworn and subscribed to before me this 2 day of August, 1886.
(Signed) T. McC. HYMAN, *D'y Clerk.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.
(Signed) HENRY RENSHAW, *Of Counsel.*

*Answer of Fanny B. Randolph. Filed August 2d,* 1886.

G. W. SENTELL
*vs.* } No. 11376.
MARTHA GROVES *et al.*

The separate answer of Fannie B. Randolph, a citizen of the State of Virginia, to the bill of complaint of the said George W. Sentell, exhibited against the said Martha Groves and others.

23 This defendant comes and for answer to the complainant's bill of complaint, or so much thereof and such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, answering, saith—

That she is not advised whether or not the said Martha Groves and William J. Groves are by law invested with such rights and interests respecting the said paper, document bearing date January 1st, 1868, as said Rosetta Rhea may at any former time have had and she will require proof of such rights and interests if any such shall be shown to exist as against this defendant. And this defendant, further answering, says that she supposes that the old firm of George W. Sentell and Co. is in liquidation in the hands of W. B. McLean, as set forth in said bill of complaint.

And this defendant, further answering, says that she has been informed that such proceedings were had in a suit entitled George W. Sentell *et al. vs.* Fannie B. Randolpf, this defendant, *et al.*, that on the first day of March, 1884, a sale was made by the sheriff in the parish of Avoyelles, and that at said sale said complainant became the purchaser of the lands of this defendant described in complainant's bill of complaint under the paragraphs "1st" and "2nd," and that at said sale the said sum of six thousand and thirty-seven $\frac{12}{100}$ dollars were retained by said George Sentell under said certificate of mortgage, which in appearance only showed a special mortgage older in date than said Johnson and Goodrich mortgage. This defendant, further answering, saith that she admits that said John-

son and Goodrich executed an act of subrogation, subrogating
24 the said old firm of G. W. Sentell & Co. to the promissory notes of said Johnson and Goodrich against this defendant secured by mortgage on certain of this defendant's property, as shown by said Exhibit No. "2."

This defendant, further answering, says that she admits that the said act of partition, termed in complainant's bill Exhibit No. 4, was executed by Mrs. Dora Stark, assisted by her husband, T. O. Stark, and this defendant on the 9th day of January, 1873, and that said Dora Stark and this defendant have held the property in conformity with said act of partition.

This defendant, further answering, says that she admits the institution of the suit of Martha Groves *et al. vs.* George W. Sentell, No. 11293 on the law side of the court, and she admits that Messrs. Merrick, Foster and Merrick, as defendants' attorneys and solicitors, have notified said Sentell not to pay over the money in his hands to the said Martha Groves and William J. Groves, claiming to be entitled to the same herself, and this defendant admits the deposit by complainant of $5,743.46 in this court to abide the decision of the court as to the deposition to be made of said deposit.

And this defendant, further answering, says that at and prior to the execution of the said pretended mortgage note and said pretended mortgage, on the first day of January, 1868, this defendant's property, she was a married woman, the wife of Christopher M. Randolph, and that she was wholly unaccustomed to matters of business, and knew nothing respecting her rights, and her said husband, having taken charge of her business and her interest in lands as head and master of the community, made an arrangement
25 with Mrs. Rosetta Greves, wife of one John Rhea, deceased, through her agent, for the benefit of the community, whereby certain moveable property, consisting of mules, horses, etc., were transferred in fact by said Mrs. Rosetta Rhea, as heir-at-law of her husband, to the community existing between this defendant and said Christopher M. Randolph, and to Miss Dora Lembeth, now Mrs. Dora Stark; that by operation of law then in force the pretended conveyance of said property to defendant and Mrs. Dora Lembuth did not and could not make the said moveable property any the less community than the conveyance directly to said Randolph, this defendant's husband, nor was said property declared to be separate property. And this defendant, further answering, says that on the first day of January, 1868, the said promissory note, not negotiable, bearing same date, was prepared and after being presented to this defendant for signature was signed by her with her husband and Dora Lembuth; that the said promissory note was executed in the form of a joint note, purporting on its face to bind each signer for their virile shares respect*ful*ly, viz., each for one-third.

That said promissory note was at the time null and void, so far as this defendant was concerned—

First, for this, that this defendant could not bind herself for a community debt, and, secondly, she could not bind herself for her husband nor conjointly with him for debts contracted by him, as

this debt necessarily was. This defendant, further answering, says that papers were prepared for her to sign, mortgaging in form her interest in lands which were inherited by this defendant and her sister, Mrs. Dora Lembuth, and described in an act passed
26 before Edward De Generes, notary public, January 1st, 1868, and that in said instrument the interest of this defendant and Miss Dora Lembeth in the following plantations and lands purported to be mortgaged to said Rosetta Rhea, viz., the Leinster plantation as it was originally composed—the Falkland tract; but this defendant avers that the mortgage note being null and void this mortgage is also null and void.

And this defendant, further answering, says that her said husband died on the ——, in the month of ——, 1868, and under and by the authority of the district court holding sessions in and for the district of Avoyelles, in said State, an inventory and estimation of the property belonging to the succession was ordered and decreed to be taken by said Edward De Generes, notary public, and the said notary, in pursuance of said decree, assisted by experts, estimated the interest of said deceased in said community at $2,030.64, including $187 separate property; all of which will more fully appear at large by reference to the annexed copy of said inventory, marked Def't's Exhibit "A" and referred to for greater certainty.

This defendant, further answering, says that such proceedings were had with the said estate of the said C. M. Randolph that the said community property was adjudicated to this defendant in conformity to law on the advice of a family meeting held before Edward De Generes, notary public, 22nd April, 1869, at said sum of $2,030, and that she subsequently, in said year (1869), stated her account, on which, as there stated, said Mrs. Rosetta Rhea was placed as a creditor for the share which would fall against
27 his estate as a community debt for said movable property sold by said Rosetta Rhea as aforesaid; all of which will the more fully and at large appear by reference to defendants' exhibits marked B and C. This defendant, further answering, says by accepting the community of acque-ts and gains existing between her deceased husband and herself she supposed herself bound, as widow in community of said deceased, for one-half of the community debt, which made this defendant liable for about $2,242.53 of said sum of $8,970.12, the amount of the mortgage note given for said personal and movable property sold by said Mrs. Rosetta Rhea to this defendant's husband and Mrs. Dora Lambeth in January, 1868, during the lifetime of this defendant's husband, who during the marriage administered the property and effects of this defendant for the benefit of the community aforesaid.

This defendant, further answering, says, as she has heretofore admitted in answer to the bill of complaint, that on or about the 9th day of January, 1873, a partition of property was made by act, under private signature, between this defendant and her said sister, Dora Lembeth, then and now the wife of Theodore O. Stark, Esq., by which it appears that thirteen hundred and sixty-two acres of said Lemster plantation, including the sugar house and field, fell to

this defendant and the residue of the same fell to Mrs. Dora Stark, with other property; all of which will more fully appear by reference to a copy of said act of partition, being Defendants' Exhibit "D," herewith filed and referred to for greater certainty.

This defendant, further answering, says that said invalid
28 promissory note and act of mortgage were, so far as she is concerned, against a prohibitory law and void, and did not bind her for said community debt nor in any other manner, and that when she had paid up the sum of $2,224.53 and interest, for which she became bound by accepting the said community, and this sum and interest she has long since paid, in whatever form credited, to the said Rosetta Rhea, together with the whole amount of the proceeds of the estate of said Christopher M. Randolph for $2,030.64, for which she was bound to account after the deduction of the payments of the privileged debts which she had previously paid, and the *pro rata* to other creditors.

This defendant, further answering, says that the said Martha and Wm. J. Groves, if it be shown that they are entitled to be considered the owners of said promissory note, have no right to apply this defendant's funds to the payments of the debts of said Mrs. Dora Stark, nor have they any right to take the proceeds of this defendant's property now deposited in court for such purpose, and that were they in any way entitled to said money or any part thereof could they retain the same without subrogating this defendant to a valid and unprescribed claim and mortgage against all that part of the real property mentioned in said act of Jan. 1st, 1868, held by said Mrs. Dora Stark under said partition or otherwise; and this defendant, further answering, says that she is not able to give the precise sums and dates of the payments made by applying her money upon said note dated January 1st, 1868, the business having been attended to by others, who, having possession of her
29 funds, assumed to act for her, and that it will be necessary to refer this part of the case to a commissioner to state an account of what sums of this defendant's money has been so applied, and she prays for leave to amend her answer to conform to the facts when ascertained, and she avers that the said Rosetta Rhea and other holders of said void note dated January 1st, 1868, have been greatly overpaid any and all liability which this defendant has incurred by accepting said community or legally administering the same or in any other lawful manner out of this defendant's money and funds.

This defendant, further answering, denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged; without this, that there is other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer to and not herein and hereby sufficiently and well answered, confessed, and traversed and avoided and denied is true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court may direct, and

humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

By MERRICK, FOSTER & MERRICK,
*Solicitors for Mrs. Fanny B. Randolph.*

*Demurrer of Martha Groves and William J. Groves Set Down for Argument.*

Extract from the Chancery Order Book.

30 WEDNESDAY, *August* 4, 1886.

G. W. SENTELL
*v.*
MARTHA GROVES *et als.* } No. 11376.

Now comes the complainant herein, through his solicitor, E. M. Hudson, Esq., and sets down the demurrer herein filed by the defendants, Martha Groves and William J. Groves, on the 2d day of August, 1886, for argument.

*Replication to Answer of Mrs. Fanny B. Randolph. Filed August* 28, 1886.

United States Circuit Court, Eastern District of Louisiana. In Equity.

GEORGE W. SENTELL
*versus*
MARTHA GROVES *et als.* } No. 11376.

Before the honorable the judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

The replication of George W. Sentell, complainant, to the
31 answer of Mrs. Fanny B. Randolph, defendant.

This repliant, saving and reserving to himself now and at all times hereinafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) E. M. HUDSON,
*Counsel and Solicitor for Complainant.*

*Answer of Wm. B. McLean, Executor. Filed October* 16, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES. } No. 11376.

32 The separate answer of William B. McLean, in his capacity as executor of the estate of Benjamin Conyers and in his capacity as liquidator of the late firm of G. W. Sentell & Co., one of the defendants herein, to the bill of interpleader of George W. Sentell.

This defendant, now and at all times reserving all benefit of exception which he may have or take to the many errors and insufficiencies in the said complainant's bill of complaint, for answer thereto or to so much thereof as this defendant is advised it is necessary for him to answer, answering, sayeth—

That the facts averred in said bill with reference to the purchase of the property therein described by G. W. Sentell under execution against Mrs. Fanny B. Randolph in the suit of G. W. Sentell *et als. vs.* Mrs. Fanny B. Randolph, No. 7049 of the docket of the 12th district court for the parish of Avoyelles, and of the retention in his hands of the sum therein set forth by the said Sentell is true; that it is true, as therein averred, that the firm of G. W. Sentell & Co., as then composed of G. W. Sentell and Benjamin Conyers, were owners, by subrogation, of a certain mortgage granted by Mrs Fanny B. Randolph on the property aforesaid to secure the sum of eight thousand dollars ($8,000), with eight per cent. interest; and it is further true that the said firm of G. W. Sentell & Co. sued the said Fanny B. Randolph upon the indebtedness secured by the said mortgage of date the 15th day of May, 1875, and obtained a judgment against her for the amount due thereunder and issued execution thereon, and that under the execution thus issued the
33 sale aforesaid of said property was made to G. W. Sentell.

That it is true that the said firm of G. W. Sentell & Co. is dissolved; that this defendant is the liquidator thereof, and that this defendant is also testamentary executor of Benjamin Conyers; that it is true, as therein averred, that Fanny B. Randolph and Dora Lambeth, wife of Theodore O. Stark, made a partition between themselves of the property jointly owned by them and described in the alleged act of mortgage executed on the first day of January, 1868; that it is true, as in said bill averred, that this defendant, as liquidator of the partnership aforesaid and as executor of the said Benjamin Conyers, deceased, aforesaid, has made demand upon George W. Sentell, claiming in his capacity aforesaid that the sums retained in the hands of the said Sentell should be paid over to him.

And, further answering, this defendant reiterates his claim and demand to have the said sum paid over to him and shows to this honorable court that such should be its judgment for the following reasons:

This defendant avers that the alleged act of purchase made on the first day of January, 1868, by Fanny B. Randolph, wife of Christopher M. Randolph, and Miss Dora Lambeth of certain personal property set forth in the act of purchase from Rosetta Groves, the widow of the late John Rhea, was a joint purchase, and that the price for which the parties bound themselves under and by virtue of the said act and of the note given in evidence of the obligation therein contained was a joint and not a several liability, and that in no event could Mrs. Fanny B. Randolph be liable for more
34 than one-half of the same.

And, further answering, this defendant avers that at the time that the said purchase of this property was made Mrs. Fanny B. Randolph was a married woman; that the purchase aforesaid was by its terms and under the law a debt contracted by the community of a-que-ts and gains which existed between her and her then husband, and that she was incapable of making the said purchase and incapable of binding herself for any liability therefor, and that for this reason the said act of purchase and the said note given in evidence thereof, so far as Mrs. Fanny B. Randolph is concerned, is utterly null and void and of no effect; that if Mrs. Fanny B. Randolph subsequent to the death of her husband did any act with reference to the community property left by her said husband the most that she could do was to bind herself for her virile share of the community debts, and that her virile share of this community of debts did not exceed one-fourth of that sum, and that in no event could the said Mrs. Fanny B. Randolph be liable for more than her said one-fourth of the indebtedness set forth in said act of purchase of date January 1st, 1868.

Further answering, this defendant says that he is informed and believes and so charges that the said Mrs. Fanny B. Randolph subsequent to the death of her husband had paid out of her own pocket to the said Rosetta Groves or her heirs more than her virile share of the said debts, and that therefore there is no obligation upon her part to pay any more than what she has paid.

Further answering, this defendant avers that the property mortgaged to secure the said debt was the separate property of the
35 said Mrs. Fanny B. Randolph, owned by her separate and apart from her husband, and that the mortgage of the said property to secure the community debt aforesaid was absolutely null and void and of no effect or validity whatsoever.

Further answering, this defendant avers that the mortgage executed by Mrs. Fanny B. Randolph to the said Johnson & Goodrich and by the said Johnson & Goodrich transferred to the firm of G. W. Sentell & Co., in liquidation, and now owned and controlled by your petitioner and liquidator was a mortgage attached to the divided share of Mrs. Fanny B. Randolph in and to the property aforesaid, and that the said mortgage was made executory in suit No. 7049 of the docket of the twelfth district court for the parish of Avoyelles, styled G. W. Sentell *et als. vs.* Mrs. Fanny B. Randolph *et als.*, for the sum of $8,000, and that only a portion of the same has been realized upon the said execution for the said firm, and that a

large amount still remains due upon the said judgment and still remains unpaid, to wit, $8,128.96, with eight per cent. interest from March 1st, 1884, and that this defendant has no security or fund out of which the same can be paid save and except the said fund set up in the bill of G. W. Sentell as being in his hands and as held by him for account of whom it may concern, and which said sum was made under the execution aforesaid of the aforesaid judgment and to which claim is made by Martha Groves and William J. Groves, defendants herein.

And this defendant avers that if it should be held that the obligation contained in the said act of January 1st, 1868, is a solidary obligation, and that the property of Mrs. Fanny B. Ran-
36 dolph is therein bound and mortgaged to secure not only her virile share of the said debt, but also the virile share of her codebtor, Mrs. Dora Lambeth, wife of Theodore Stark, that then in equity and good conscience the said Martha Groves and William J. Groves should be compelled by this honorable court to exhaust the other half of the said plantation owned and controlled by the said Dora Lambeth before they can set up any claim, right, or demand to the fund herein resulting from the sale of the half belonging to the said Mrs. Fanny B. Randolph; that it would be against equity to allow these parties who have two funds upon which to make resort to obtain payment of their debt to seize the property of the surety for the debt before they seize the property of the principal, Mrs. Dora Lambeth, and that it would be still more inequitable to allow them to make this resort first upon the property of the said Fanny B. Randolph before exhausting their demand and claim against the property of the said Dora Lambeth.

Wherefore this defendant prays that your honors may adjudge and decree that the fund in the hands of the said G. W. Sentell may be paid over to him as liquidator of the estate of G. W. Sentell & Co. and as executor of the estate of Benjamin Conyers, deceased, to be applied to the payment of the mortgage and judgment aforesaid; and in the event that your honors should determine that the fund in court is in any manner liable for that portion of the debt sued upon by the said Martha and William J. Groves and due by the said Dora Lambeth, may it please your honors to decree that before the said Martha and William J. Groves can apply any portion
37 of the fund to the payment of their claim they shall be compelled to exhaust their remedy against the property owned by Dora Lambeth and bound by mortgage to secure the same, and that they shall have resort upon the said fund only for such balance, if any, as may remain due after exhausting their remedy upon the half of said property belonging to Dora Lambeth, and that all the remainder and residue of the said fund after satisfaction of the claim aforesaid shall be paid over to this defendant.

And this defendant will, as in duty bound, ever pray.

—— ——, *Solicitors.*

—— ——, *Of Counsel.*

Personally came and appeared before me, the undersigned authority, W. B. McLean, who, being duly sworn, deposes and says that he has read the foregoing answer and knows the same to be true so far as stated upon his own knowledge, and that he believes the same to be true so far as stated upon information and belief.

(Signed) WM. B. McLEAN.

Sworn to and subscribed before me this 16th day of October, 1886.

[SEAL.] (Signed) BENJAMIN ORY, *Not. Pub.*

*Replication to Answer of Wm. B. McLean, Liquidator, &c. Filed Nov'r 4, 1886.*

38 United States Circuit Court, Eastern District of Louisiana.
In Equity.

G. W. SENTELL
*versus*
MARTHA GROVES *et als.* } No. 11376.

Before the honorable the judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

The replication of George W. Sentell, complainant, to the answer of William B. McLean, liquidator and test'y executor, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered into, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready
39 to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) E. M. HUSDON,
*Counsel and Solicitor for Complainant.*

*Order: Demurrer of Martha and Wm. J. Groves Set Down for Argument.*

Extract from the Minute Book, November term, 1886.

NEW ORLEANS, WEDNESDAY, *November* 17, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

On motion of E. M. Hudson, Esq., solicitor for plaintiff, it is ordered that the demurrer to the bill of complaint filed by the defendants Groves be set down for argument on Saturday, the 27th day of November, 1886, and that said defendants be notified thereof.

*Order: Demurrer of Groves Overruled.*

Extract from the Minute Book, November term, 1886.

40 NEW ORLEANS, MONDAY, *December* 13, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

This cause came on to be heard on the demurrer of Martha Groves and of William J. Groves, defendants, to the bill of interpleader of George W. Sentell, complainant, and was argued by counsel; on consideration whereof it is ordered, adjudged, and decreed that the bill of interpleader be maintained, the demurrer to the said bill of interpleader herein be, and the same is hereby, overruled, and that said defendants be allowed until the next rule day to answer.

*Answer of Martha and Wm. J. Groves. Filed Dec'r* 31, 1886.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

The joint and several answer of Martha Groves and William
41 J. Groves, defendants herein, to the bill of interpleader of George W. Sentell.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer

thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say—

That it is true, as alleged in said bill, that said George W. Sentell, on March 1st, 1884, at a sale by the sheriff of the parish of Avoyelles, in Louisiana, in the suit of George W. Sentell *et al. vs.* Fanny B. Randolph *et al.*, No. 7049 of the docket of the 12th district court for the parish of Avoyelles, purchased the property described in said bill, but they do not know and cannot set forth as to their belief whether the suit aforesaid was to enforce such debt as is in said bill set forth.

That it is true, as is therein averred, that said George W. Sentell did retain in his hands as part of the purchase price of said property a sufficient sum to pay the amount of a previous mortgage created by act in favor of Mrs. Rosetta Rhea and due to these defendants, as said purchaser well knew, executed January 1st, 1868, by Fanny B. Randolph, wife of Christopher M. Randolph, and by him thereto authorized, and by Dora Lambeth, now wife of Theodore O. Stark, before Edward de Generes, notary public for said parish of Avoyelles.

42 That it may be, but these defendants do not know whether it is true, that the property referred to in said bill as described in Exhibit No. 4 was divided as in said bill is alleged, and that they do not know whether or not it is true that Fanny B. Randolph became the owner of the property so thereafter purchased by George W. Sentell at said sheriff's sale, and that Dora Lambeth became the owner of the remainder thereof, and these respondents have no interest in law therein.

That it is true that defendants as sole residuary legatees of said Rosetta Rhea have instituted a suit in this honorable court for four thousand eight hundred and seventy-three dollars, with interest at eight per cent. per annum from March 5th, 1884, as will appear by reference to the record in the suit No. 11293 of the docket of this honorable court, entitled Martha Groves and William J. Groves *vs.* George W. Sentell.

That they have been informed and believe, as in said bill is alleged, that since the filing of said suit No. 11293 said Fanny B. Randolph and said William B. McLean in the capacities in said bill stated gave notice that they claimed the money so retained by George W. Sentell as part of the purchase price of said property, but they believe same was instigated by complainant herein for his own benefit and to the detriment of these respondents.

And, further answering, defendants say that said George W. Sentell is indebted unto these defendants in the sum of four thousand eight hundred and seventy-three dollars, with interest thereon, at eight per cent. per annum, from March 5th, 1884, until paid for this, to wit:

43 That these respondents are the sole residuary legatees of the late Rosetta Rhea and have been recognized as such by decree of the circuit court of Jefferson county, Indiana, and as such are the holders and owners of the following-described note and of the mortgage securing the same, viz., note dated Avoyelles,

La., Leinster plantation, January 1st, 1868, for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars due two years after date to the order of Rosetta Rhea, with interest at the rate of eight per cent. per annum from its date until paid, drawn by Fanny B. Randolph and Dora Lambeth, which note has been reduced by partial payments to four thousand eight hundred and seventy-three dollars, with interest, at eight per cent. per annum, from March 5th, 1884, and that to secure the payment of said note the makers thereof, by act passed January 1st, 1868, before Edward de Generes, a notary public for the parish of Avoyelles, La., mortgaged the following-described property, viz:

(1.) That certain plantation or tract of land known as the Leinster plantation, situated on Bayou Huffpower and Bayou Clair, in the said parish of Avoyelles, containing two thousand four hundred and five acres, more or less, being composed of the following subdivisions of land according to the surveys of the United States Land Office Department, viz:

Lots Nos. one and three of section thirteen, east half of southeast quarter, and east half of southwest quarter of section fourteen.

West half of southeast quarter of section fifteen.

Lots Nos. one and six of section twenty-two.

Lower half of lot No. three of section twenty-two.

44 West half of northeast quarter of section twenty-two.

Lots Nos. one, two, three, and four of section twenty-three.

Lot No. 1 of section twenty-four.

Lot No. four of section twenty-six.

Lots Nos. one, six, and seven of section twenty-seven.

West half of section thirty-four.

Southeast quarter of section thirty-four.

West half of northeast quarter of section thirty-four.

East half of northeast quarter of section thirty-four.

West half of northwest quarter of section thirty-five.

West half of southwest quarter of section thirty-five.

All of said lots or parcels of lands being situated in township one south, of range three east.

(2.) A certain tract of land adjoining the said Leinster plantation, know as the Falkland tract, containing five hundred and eighty acres, and that said Rosetta Rhea was duly recognized as the heir of her husband, John Rhea, by the common pleas court of Jefferson county, Indiana.

All of which will more fully appear by reference to the duly authenticated copies of the decree of court recognizing these respondents as said legatees and of the will of the late Rosetta Rhea and of the letters of administration on her estate and of the order recognizing her as heir of her husband and the rights of these respondents herein and by reference to said note and to the authentic copy of said act of mortgage, which are hereunto annexed and made part hereof and are marked Exhibits "A, B, C, D, & E."

45 That on March 1st, 1884, at a sale made by the sheriff of the parish of Avoyelles, in the suit of G. W. Sentell *et al. vs.*

Fanny B. Randolph *et al.*, No. 7049 of 12th district court, parish of Avoyelles, said George W. Sentell purchased the property described in Exhibit "F," annexed hereto, and which exhibit is a duly certified copy of the said sheriff's deed to said Sentell from the records oi said parish, and which Exhibit "F" and Exhibit "G" (the certified copy of certificate of mortgages referring to said sale) are hereunto annexed as part hereof.

That the property so purchased by said Sentell at said sheriff's sale is the property upon which said mortgage was granted to secure the payment of the aforesaid note, and said Sentell purchased said property subject to said mortgage and retained in his hands as part of the price of the property so purchased by him an amount sufficient to pay the balance on said note and assumed to pay said note and mortgage as part of the purchase price of said property, and has recognized said Rosetta Rhea as owner thereof and as entitled to payment of same.

That the balance now due and owing on said note is four thousand eight hundred and seventy-three dollas and interest thereon, at eight per cent. per annum, from March 5th, 1884, until paid, and that said Sentell now refuses to pay said amount.

That all proper notices and demands, as required by law, have been given and all legal delays elapsed.

That the said note and the said mortgage securing the same have been acknowledged by said Mrs. Fanny B. Randolph and said Dora Lambeth, now Mrs. Stark, as also appears by reference to act
46 of April 28th, 1873, before N. B. Trist, notary public, being act of partial payment, with subrogation and extension of time between Mrs. Rhea, Mrs. Stark, Mrs. Randolph, and Nalle & Cammack, and by reference to act of May 5th, 1877, before N. B. Trist, notary public, granting partial release of mortgage, copies of which said acts, as well as of the power of attorney to T. O. Stark, mentioned in said act of April 28th, 1873, being hereunto annexed as Exhibits H, I, & J, and as also appears by acts of July 2nd, 1879, and of April 28th, 1880, of partial payment with subrogation before N. B. Trist, notary public, copies whereof are hereunto annexed as Exhibits "K & L."

And these defendants, further answering, say that said note and mortgage have been recognized as due, binding, valid, and executory by said George W. Sentell and his said firm of G. W. Sentell & Co., as appears by acts before N. B. Trist, notary public, dated respectively July 2nd, 1879, April 28th, 1880, and Dec. 13th, 1883, copies whereof are hereunto annexed as Exhibits "K, L, & M," and complainant's and interpleader's attempted denial thereof in this cause is in bad faith, and their acts, in good conscience, estop them from the proceeding herein.

That said recognition and acknowledgment by said Mrs. Fanny B. Randolph of said note and mortgage was made subsequent to the death of her husband; that even if said note was originally a community debt as to Mrs. Fanny B. Randolph (which is not admitted, but, on the contrary, denied, defendants averring that the same was as to Mrs. Randolph an individual, separate indebtedness), yet the

marriage between her and her husband having been dissolved
47 by death, any ratification, assumption, or acknowledgment by her of the note, as well as of the mortgage given to secure the same, was perfectly legal, she being then removed from all marital influence; that when said mortgage was granted it was granted as an indivisible obligation resting upon property held in indivision by the mortgagors; that whether or not Mrs. Randolph has paid more than the half or the quarter of the amount of said note can in no manner affect the right of these defendants under said mortgage, as any such pretended overpayment by Mrs. Randolph is a matter for adjustment between herself and Mrs. Stark and is a matter with which these defendants have no concern, and she cannot arrest them in the prosecution of their said mortgage rights.

These defendants, further answering, say that George W. Sentell is bound absolutely to these respondents according to his bid, assumption, and deed of sale, and it is only upon the funds realized from such bid that this honorable court in this controversy can adjudicate, and all the rights of all other parties to this controversy may and can be adjusted otherwise.

Defendants, further answering, say that it is contrary to equity and good conscience to permit Mrs. Randolph, after the indulgences and extensions allowed her by Mrs. Rhea and after the repeated acknowledgments by Mrs. Randolph of said note and mortgage, to deny the validity thereof.

That respondents' mortgage rests and rested against all of said property, and they have the right to enforce the same against all or any part thereof and especially as against complainant, who assumed
as part of his purchase price the amount due to these re-
48 spondents, which he has improperly refused to pay and upon which interest is due at eight per cent. per annum, as alleged in their action herein enjoined, until final payment thereof, with all just damages and counsel fees in this behalf most inequitably caused by the wrongful action of complainant.

That these respondents especially aver no other person or persons are interested in or entitled to any part or portion of said fund due by complainant as part of his bid aforesaid and deposited in the registry of this court and the interest due thereon save these respondents, and the same should in good conscience be ordered to be paid to these respondents, with all damages in this behalf most wrongfully sustained.

Wherefore these respondents pray that this honorable court will decree in their favor and against the complainant herein and against the other defendants herein, and will decree that the fund herein deposited in the registry of this court is the property of these respondents, and that the same be paid to them, and they further pray that this matter be referred to a master to ascertain what further amount may be due to these respondents by complainant as interest until final payment under his contract and agreement and assump-

tion hereinbefore set forth and what further damages and also what costs are due to these respondents by said complainant.

(Signed) W. S. BENEDICT AND
H'Y RENSHAW, *Solicitors.*

49 Personally came and appeared before me, the undersigned authority, W. S. Benedict, who, being duly sworn, deposes and says that he has read the foregoing answer and knows the same to be true so far as stated upon his own knowledge, and that he believes the same to be true so far as stated upon information and belief.

(Signed) W. S. BENEDICT.

Sworn to and subscribed before me this 31st day of December, 1886.

[SEAL.] (Signed) ANDREW HERO, JR., *Not. Pub.*

*Replication to Answer of Martha Groves and Wm. J. Groves. Filed Jan'y 26, 1887.*

United States Circuit Court, Eastern District of Louisiana. In Equity.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. *No.* 11376.

Before the honorable the judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

50 The replication of George W. Sentell, complainant, to the answer of Martha Groves and Wm. J. Groves, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) E. M. HUDSON,
*Counsel and Solicitor for Complainant.*

*Motion and Order Appointing J. W. Gurley Master and Examiner. Entered and Filed 11th Febr'y, 1887.*

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

51 On motion of W. S. Benedict, attorney for defendant Mrs. Groves, and on suggesting issue has been made herein—

It is ordered that this case be referred to Mr. J. W. Gurley, as master and examiner, to take testimony and report thereon.

*Motion and Order to Pass Publication of Testimony. Entered and Filed Nov'r 9, 1887.*

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

On motion of Merrick & Merrick, of counsel for Mrs. Fanny B. Randolph, and of Farrar & Kruttschnitt, counsel for the liquidator of Sentell and Company, it is ordered that publication be passed of the testimony on file in this case.

*Hearing, Notes of Evidence, and Continuance.*

Extract from the Minute Book, April term, 1888.

NEW ORLEANS, MONDAY, *June* 11, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

52 G. W. SENTELL
*vs*
MARTHA GROVES *et als.* } No. 11376.

This cause came on at this term to be heard upon the bill of interpleader, the answer of Fanny B. Randolph, of W. B. McLean, testamentary executor of Benj. Conyers and liquidator of the firm of G. W. Sentell & Co., and of Martha J. Groves and Wm. J. Groves, and the replications thereto and exhibits and testimony.

E. M. Hudson appearing for complainant; Farrar, Jonas & Kruttschnitt for W. B. McLean, testamentary executor of Benj. Conyers and liquidator of G. W. Sentell & Co.; Merrick and Merrick for Mrs. Fanny B. Randolph; W. S. Benedict for Martha Groves and Wm. J. Groves.

Whereupon the complainant and W. B. McLean, testamentary executor of Benj. Conyers and liquidator of the firm of G. W. Sentell & Co., offered the following evidence, viz:

I. Complainant, G. W. Sentell, offers—

A. The exhibits, numbered from (1) to (8), annexed to and made part of the bill of complaint, being—

Exhibit No. (1). Certified copy of sheriff's deed to G. W. Sentell of property of Mrs. F. B. Randolph.

Exhibit No. (2). Certified copy of act of mortgage passed before A. Hero, Jr., not. pub., May 15th, 1875.

Exhibit No. (3). Certified copy of act of subrogation passed before A. Hero, Jr., not. pub., June 2d, 1875.

Exhibit No. (4). Certified copy of act of mortgage passed
53 before Ed. de Generes, not. pub., Jan. 15th, 1868.

Exhibit No. (5). Certified copy of act of partition between Mrs. Randolph and Mrs. Stark, dated Jan. 9th, 1873.

Exhibit No. (6). Record of suit No. 11293 of the docket of this court, styled Martha Groves *et al. vs.* G. W. Sentell,

Exhibit No. (7). Original letter of Merrick, Foster & Merrick, att'ys of Mrs. F. B. Randolph, to G. W. Sentell.

Exhibit No. (8). Original letter of W. B. McLean, liquidator and testamentary executor of Benjamin Conyers.

B. Receipt of clerk for deposit of fund in registry.

W. B. McLean, liquidator and testamentary executor, offers—

(A.) All offerings made by G. W. Sentell and Mrs. F. B. Randolph.

(B.) Certified copies of petition, answers, judgment, writ of *fieri facias*, notice of seizure, appraisement, and return on writ of *fieri facias* in suit No. 7049 of the district court of the parish of Avoyelles, styled G. W. Sentell *et al. vs.* Fanny B. Randolph *et al.*, marked Exhibit P.

Mrs. Fanny B. Randolph offers—

1. Evidence of Mrs. Fanny B. Randolph, on file, taken before J. W. Gurley, special master, at various times.

2. The testimony of J. C. Correjolles, ditto.

3. The testimony of T. O. Stark, Esq., at various times, ditto.

4. Document marked "Mrs. R. No. 1," inventory of the succession of C. M. Randolph, dec.

5. Document "Mrs. R. No. 2," family meeting and proceedings and adjudication of property to Mrs. F. B. Randolph.

54 6. Decree (with petition) homologating above document, "Mrs. R. No. 3."

7. Document "Mrs. R. No. 4," certified copy of the partition.

8. Document "Mrs. R. No. 5," a certified copy of the final account of Mrs. Fanny B. Randolph, administering C. M. Randolph's succession as tutrix.

9. Document "Mrs. R. No. 6," a certified copy of decree releasing her mortgage on such rendition and settlement of the account and discharge.

10. Document "Mrs. R. No. 7," original list of the horses and mules bought by C. M. Randolph from the John Rhea estate.

11. Doc. "Mrs. R. No. 8," sketch of power of att'y.

12. Documents Mrs. R. No. 9 and Mrs. R. No. 10, being the two drafts drawn by Mr. Rosetta Rhea, one for $1,500 and the other for $1,000.

13. Document "Mrs. R. No. 11," being a duly certified copy of

the said final account of Mrs. F. B. Randolph of her administration of her said deceased husband's estate, together with the decree of homologation thereon and certificates of authentications.

14. Document "Mrs. R. No. 12," petition and decree releasing mortgages and granting Mrs. Randolph a discharge.

15. Exhibit D, 3 May, 1887, before the master, and marked "Mrs. R. No. 4."

16. Original non-negotiable note, dated Jan. 1, 1868, signed Fanny B. Randolph, C. M. Randolph, Dora Lambeth.

55 William J. Groves and Martha Groves offered the following evidence, viz:

Exhibit "A," being certified copy of certain proceedings in the circuit court, Jefferson county, Indiana, marked Def'ts' No. 1.

Exhibit "B," being a copy of the last will of Rosetta Rhea and the letters of administration, with the will annexed, on the estate of Rosetta Rhea, marked Def'd'ts' No. 2.

Exhibit "C," being petition of Rosetta Rhea for distribution of estate of John Rhea, finding, order, and judgment of court thereon and a bond filed therein, and proceedings in common pleas court of Jefferson county, Indiana, marked Def'd'ts' No. 3.

Exhibit "D," being the note sought to be collected herein and the endorsements thereon, marked Def'd'ts' No. 4.

Exhibit "E," being act before Edward Generes, January, 1868, and the certificate of registry thereof, marked Def'd'ts' No. 5.

Exhibit "F," being copy of sheriff's deed to Sentell and certificate of record thereon, marked Def'd'ts' No. 6.

Exhibit "G," being certificate of mortgage, marked Def'd'ts' No. 7.

Exhibit "H," being act before N. B. Trist, notary, partial payment of subrogation and extension of time, — Def'd'ts' No. 8.

Exhibit "I," being act before N. B. Trist, notary, of May 5th, 1877, partial release of mortgage, marked Def'd'ts' No. 9.

Exhibit "J," being power of attorney, Theodore Stark, by Fanny B. Randolph, widow of C. M. Randolph, and Dora Lambeth, wife of T. O. Stark, marked Def'd'ts' No. 10.

56 Exhibit "K," being act before N. B. Trist, notary, of July 2, 1879, partial payment with subrogation, marked Def'd'ts' No. 11.

Exhibit "L," being act before N. B. Trist, notary, April 28, 1880, partial payment with subrogation, marked Def'd'ts' No. 12.

Exhibit "M," being act before N. B. Trist, notary, December 13, 1883, acknowledgment of payment to G. W. Sentell & Co., marked Def'd'ts' No. 13.

Exhibit "N," being assignment by Thomas A. Pogue, administrator, to Martha and William J. Groves, marked Def'd'ts' No. 14.

And thereupon the cause was argued by counsel for the complainant and W. B. McLean, testamentary executor & liquidator, and for Mrs. Fanny B. Randolph and was continued to Friday, June 15, 1888, for argument on the part of counsel for Martha and William J. Groves.

*Complainant's Evidence.*

Certified copy of sheriff's deed to G. W. Sentell of property of Mrs. F. B. Randolph, marked Exhibit No. 1.

STATE OF LOUISIANA,
*Parish of Avoyelles.*

Whereas I, Leon Gauthier, sheriff of the parish of Avoyelles, by virtue of a writ of *fieri facias* issued out of the 12th district court in and for the parish of Avoyelles and to me directed
57 against the goods and chattels, lands and tenements, rights and credits of Mrs. Fanny B. Randolph and Ernest Theodore Genert, defendants, at the suit of George W. Sentell and *als.* in suit No. 7049, docket of the 12th district court, parish of Avoyelles, State of Louisiana, entitled G. W. Sentell and *als. vs.* Fanny B. Randolph & *als.*, did seize the following property, belonging to said Mrs. F. B. Randolph and Ernest Th. Genert, to wit:

1st. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clear and the public road leading from Holmesville to Marksville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley, others, and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Fanny B. Randolph.

2nd. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven and the north
58 half of southwest quarter of said section twenty-seven, the northwest quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres.

And having exposed the same to public sale according to law on the first day of March, one thousand eight hundred and eighty-four, for cash, with the benefit of appraisement, the conditions previously advertised and made known to the bidders before offering said property for sale, and also made known that said property is subject to special and general mortgages by exhibiting and reading the certificate of the parish recorder, bearing date March first,

1884, and certifying that said property is encumbered as aforesaid, when on said conditions George Washington Sentell, being the last and highest bidder, became the purchaser thereof for the price and sum of twelve thousand and two dollars, of which the following disposition has been made:

| | |
|---|---|
| Clerk's and recorder's costs | $10 10 |
| Witness' costs on writ | 20 40 |
| Guardian's costs | 30 00 |
| Sheriff's costs | 91 90 |
| Printer's costs | 21 00 |
| Parish tax, 1880 | 178 50 |
| Interest for 1881 | 12 78 |
| Interest for 1882 | 12 78 |
| Interest for 1883 & two months of 1888 | 78 97 |
| 59 Rhea mortgage prior to the Sentell mortgage, as per certificate of the parish recorder | 4,873 00 |
| Interest on same up to date of sale | 1,164 12 |
| Taxes of 1883 | 187 64 |
| Balance paid Sentell & *als.* in suit No. 7049 | 5,320 81 |
| | $12,002 00 |

The amount of six thousand and thirty-seven and $\frac{12}{100}$ dollars, being the Rhea mortgage, with interest from March fifth, 1881, was retained in the hands of the purchaser, G. W. Sentell, said mortgage being prior and special. The balance of said bid, being five thousand and nine hundred and sixty-four & $\frac{88}{100}$ dollars, was paid to me in cash, receipt whereof is hereby acknowledged:

Now, therefore, know all men by these presents that I, the said sheriff, do, in consideration of the premises and by virtue of the act in such cases made and provided, grant, bargain, sell, assign, and set over to the said George W. Sentell, his heirs and assigns, all the above-described property and all the right, title, interest, or demand which the said F. B. Randolph and E. Th. Genert on the first day of March, 1884, or at any time since had in or to the said property or any part thereof; to hold the same to the said heirs and assigns forever.

In testimony whereof I have hereunto placed my official signature this first day of March, A. D. 1884.

Avoyelles, this first day of March, 1884.

(Signed) LEON GAUTHIER, *Sheriff.*

Signed in presence of—
(Signed) W. HALL.
C. CANNON.

60 STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office.

Given under my hand and seal of office, at Marksville, Avoyelles, this 13th day of March, A. D. 1884.

[SEAL.] (Signed) J. A. MORROW, *D'y Clerk.*

*Certified Copy of Act of Mortgage Passed Before A. Hero, Jr., Not. Pub., May 15th, 1875, Marked Exhibit No. 2.*

Mrs. Fanny B. Randolph to Johnson — Goodrich.

STATE OF LOUISIANA, }
*Parish and City of New Orleans.* }

Be it known that on this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth—

Before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Fanny
61 B. Lambeth, the widow, of lawful age, of the late Christopher M. Randolph, deceased, of the parish of Avoyelles, in this State, who declared that whereas in her joint cultivation with Mrs. Dora Lambeth, the wife, of lawful age, of Th-odore O. Stark, of said parish, up to December, eighteen hundred and seventy-two, of the Dora and Leinster plantations, situated in said parish of Avoyelles, then owned by them *undivision*, the said Mrs. Randolph and said Mrs. Stark became indebted unto Messrs. Johnson & Goodrich, a copartnership of this city, in the sum of thirty thousand dollars for and on account of supplies and advances made and furnished by said firm to the aforesaid plantations; and whereas Messrs. Johnson & Goodrich aforesaid have instituted legal proceedings in the seventh judicial district court of the State of Louisiana for said parish of Avoyelles against the aforesaid parties for the recovery of the indebtedness or sums of money due unto them in the premises, as will more fully appear by reference to the suits numbered 5655 and 5656 of the docket of said court; and whereas as a compromise of all their differences and for the purposes of putting an end to said lawsuits the parties defendants thereto have agreed to pay said Messrs. Johnson & Goodrich the sum of sixteen thousand dollars in equal instalments on the first day of January in each of the years 1876, 1877, and 1878, bearing eight per cent. interest per annum from the 5th of May, 1875, for which said instalments said Mesdames Randolph & Stark should each furnish their notes for the aggregate sum of eight thousand dollars, secured by mortgage on the respective plantations now owned by each, and in addition thereto said
62 Mrs. Stark should grant a mortgage on her plantation as security for the payment of four thousand four hundred dollars of the notes to be furnished by said Mrs. Randolph, all relative to which will more fully appear by reference to a certified copy of the original agreement or compromise entered into by the aforesaid parties, annexed in the margin hereof for reference:

Now, therefore, in consideration of the premises and in fulfilment of the conditions imposed upon her by said agreement, the said Mrs. Fanny B. Randolph moreover declared and acknowledged that she is justly and truly indebted unto the said Messrs. Johnson & Goodrich in the sum of eight thousand dollars, in settlement whereof the said Mrs. Randolph has furnished her three notes for the sum of two thousand six hundred and sixty-six 66⅔-100 dollars each, drawn to the order of and endorsed by herself, dated this day, and made payable on the first day of January, 1876, 1877, and 1878 respectively after date, bearing interest at the rate of eight per cent. per annum from the fifth day of May, 1875, until paid, which said notes, after having been paraphed by me, said notary, for identification herewith, were delivered to William A. Johnson, of said firm of Johnson & Goodrich, who hereby acknowledges their receipt.

And, in order to secure the punctual payment of said notes at maturity in capital and interest, said Mrs. Randolph moreover declared that she hereby mortgages and hypothecates unto and in favor of said Messrs. Johnson & Goodrich or of any future holder or holders of said above-described notes or either of them the following-described property, viz:

63 1st. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situate in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clare, and bounded on the west by Bayou Clare and the public road leading from Holmesville to Marksville, on the south by lands of Boice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart & Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

And 2nd. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section No. twenty-seven, the north half of the southwest quarter of said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres.

64 The said property is so to remain mortgaged and hypothecated until the full and final payment of the aforesaid notes in capital and interest, the said mortgager hereby binding herself and her heirs not to alieniate, deteriorate, nor encumber the same to

the prejudice of these presents, which are accepted by said mortgagee.

And the said Mrs. Fanny B. Randolph further declared that she does by these presents bind and obligate herself to cause all and singular the buildings and improvements on the afore-described — to be insured and kept insured against the risk of fire by one of the insurance companies of this city in the sum of no dollars until the full and final payment of the afore-described notes and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances, in default whereof said mortgagee and any and all holders of said notes is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagor; but this clause shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And the said mortgagor further declared that she does by these presents consent, agree, and stipulate that in the event of the said notes or either of them not being punctually paid at maturity it shall be lawful for and she does hereby authorize the said mortgagee, or any other holder or holders thereof, to cause all and
65 singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process (issued by any competent court) without appraisement to the highest bidder, payable cash, the said mortgagee herein expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of movable or immovable effects, &c., seized and sold under executory or other legal process, the said mortgagee hereby confessing judgment in favor of said mortgagee and such person or persons who may be the holder or holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said mortgagor further declare- that she does by these present- bind and obligate herself and her heirs to pay and reimburse unto said mortgagee and such person or persons as may be the holder or holders of said notes all such lawyer's or attorney's fees, together with all such costs, charges, and expenses as said mortgagee or any such holder or holders shall or may incur or pay in the event of the non-payment of said notes at maturity; said attorney's fees, however, to be fixed at five per cent. on the amount so in suit.

Now, to secure the faithful performance of the foregoing obligation and the reimbursement and payment of the said lawyer's or attorney's fees, costs, charges, and expenses aforesaid and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee or any holder or holders of the aforesaid notes in causing insurance to be effected, on default
66 of said mortgagor as aforesaid, she, the said mortgagor, does by these presents further specially mortgage and hypothecate

the hereinbefore-described properties unto and in favor of said mortgagee and all holders of said notes or either of them.

And the parties hereto declared that they dispense with the production of a certificate from the recorder of mortgages for said parish of Avoyelles for annexation hereto, as is otherwise required by law, to show what, if any, mortgage *are* recorded against said property in the name of the said mortgagor.

Thus done and passed, in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conand, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) FANNY B. RANDOLPH.
W. A. JOHNSON.
GEORGE CENAS.
P. A. CONAND.
ANDREW HERO, JR., *Not. Pub.*

A true copy of the original on file and of record in my office.
New Orleans, La., May 17th, 1875.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

67 I do hereby certify the above and foregoing to be a true and correct copy of a copy on file and of record in my office, in Mortgage Book 20, folio 64 to 68, inclusive.

Given under my hand and seal of office, at Marksville, Avoyelles parish, La., on this 17th day of May, A. D. 1886.

[SEAL.] T. J. ARMITAGE,
*D'y Clerk & Recorder.*

*Certified Copy of Act of Subrogation Passed Before A. Hero, Jr., Not. Pub., June 2d, 1875, Marked Exhibit No. 3.*

Subrogation by Johnson & Goodrich, in liquidation, to G. W. Gentell & Co., in liquidation.

STATE OF LOUISIANA, }
*Parish and City of New Orleans.* }

Be it known that on this second day of June, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth, before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared—

George W. Sentell, of this city, a member of and herein representing the firm of G. W. Sentell & Co., of this city, now in

liquidation, which was composed of Benjamin Conyers and
68 him, said appearer—

And also appeared William A. Johnson and Ferdinand M. Goodrich, both of this city, members of and composing the firm of Johnson & Goodrich, also in liquidation—

Which said Messrs. Johnson & Goodrich declared that they are the *bona fide* owners and possessors of six certain promissory notes for the sum of two thousand six hundred and sixty-six $66\frac{2}{3}$-100 dollars each, three thereof being drawn by Mrs. Fanny B. Lambeth, widow of Christopher M. Randolph, deceased, to the order of and endorsed by herself, dated the fifteenth day of May last past and made payable respectively on the first day of January, eighteen hundred and seventy-six, eighteen hundred and seventy-seven, and eighteen hundred and seventy-eight, with interest, at the rate of eight per cent., from the fifth day of May, eighteen hundred and seventy-five, until paid, and the other three thereof being drawn by Mrs. Dora Lambeth, the wife, of lawful age, of Theodore O. Stark, to the order of and endorsed by herself, countersigned by her said husband, dated Avoyelles parish, La., on the nineteenth day of May last past and made payable at the Canal bank, in this city, respectively on the first day of January, in the year eighteen hundred and seventy-six, eighteen hundred and seventy-seven, and eighteen hundred and seventy-eight, with interest, at the rate of eight per cent. per annum, from the fifth day of May, eighteen hundred and seventy-five, until paid, which said six notes were made and furnished by said Mesdames Randolph and Stark unto said Johnson & Goodrich
in settlement or compromise of the indebtedness due by them
69 unto said firm arising out of supplies and advances furnished and made unto said Mesdames Stark & Randolph by said firm of Johnson & Goodrich for the cultivation of the Dora & Leinster plantations to the extent and amount of thirty thousand dollars, and for the purpose of putting an end to the lawsuits or legal proceedings that had been instituted by Johnson & Goodrich in the seventh judicial district court for the parish of Avoyelles, in this State, under the numbers 5655 and 5656 of the docket of said court, for the recovery of said indebtedness;

And whereas payment of the afore-described three notes drawn by said Mrs. Dora L. Stark is secured by the special mortgage which she granted in favor of said Johnson & Goodrich, their heirs and assigns, by an act passed before Louis V. Gremillion, a notary in the parish of Avoyelles, in this State, on May 19th, 1875, upon certain property and real estate situated in the parish of Avoyelles, in this State, and therein fully described, and the payment of the afore-described three notes drawn by said Mrs. Fanny B. Randolph is secured by the special mortgage which she granted upon certain real estate, also situated in said parish of Avoyelles, in favor of said Messrs. Johnson & Goodrich, as well as of any and all future owner or owners thereof by act passed before the undersigned notary on the fifteenth day of May, eighteen hundred and seventy-five, and in addition thereto payment of fourteen hundred and thirty-three $33\frac{1}{3}$-100 dollars, and interest of each of said three notes drawn by

Mrs. Randolph is still further secured by the mortgage which said Mrs. Stark granted in the aforesaid act passed before said notary Gremillion on the nineteenth day of May, eighteen hundred
70 and seventy-five, and which act said Mrs. Stark guaranteed the payment of said notes of Mrs. Randolph to the extent and amount of four thousand four hundred dollars and interest;

And whereas the aforesaid G. W. Sentell & Company in liquidation have agreed to purchase the aforesaid six notes upon the condition of being subrogated to all of the rights and privileges of said Messrs. Johnson & Goodrich thereto, whether accruing under said several acts of mortgage or otherwise:

Now, therefore, in consideration of the premises and of the surrender and delivery at the execution hereof and in the presence of the undersigned notary and witnessess by said G. W. Sentell for and on behalf of his said firm of G. W. Sentell & Co. in liquidation unto said Messrs. Johnson & Goodrich of the following-described promissory notes, of which said G. W. Sentell & Co. are the *bona fide* owners and possessors, viz:

1st. A note for the sum of three thousand dollars, drawn by Matt. F. Johnson to the order of and endorsed by said Johnson & Goodrich, dated March 13, 1874, and payable ninety days after date.

2nd. A promissory note for the sum of five thousand dollars, drawn by said Matt. F. Johnson to the order of and endorsed by said Johnson & Goodrich, dated February 25, 1874, and payable on the thirty-first day of May, eighteen hundred and seventy-four.

And 3rd. A promissory note for the sum of three thousand dollars, drawn by J. W. Montgomery to the order of and endorsed by said Johnson & Goodrich, dated November 4, 1873, and payble on 26th April, 1874.

And upon the further consideration of the release and dis-
71 charge hereby granted by said G. W. Sentell & Co. in liq. unto the aforesaid Johnson & Goodrich of and from all action and manner of actions, cause and causes of actions, and liability whatsoever by reason of the aforesaid Johnson & Goodrich having endorsed the following-described drafts and note held and owned by said G. W. Sentell & Co., viz:

1st. A draft for the sum of three thousand dollars, dated March 5, 1874, drawn by J. R. Bustin & Co. upon and accepted by Fasley Bright & Co., to the order of and endorsed by said Johnson & Goodrich and payable on June 16th, 1874.

2nd. A draft for the sum of three thousand dollars, dated March 2nd, 1874, drawn by Morgan & Caldwell upon and accepted by Fasley Bright & Co., to the order of and endorsed by said Johnson & Goodrich and payable on June 16th, 1874.

And 3rd. A note for the sum of three thousand two hundred dollars, drawn by Fasley Bright & Co., to the order of and endorsed by said Johnson & Goodrich, dated February 5th, 1874, and payable at ninety days after date.

The aforesaid Messrs. Johnson & Goodrich moreover declared that they do by these presents transfer, assign, and set over unto the said G. W. Sentell & Co. in liquidation without any warranty

whatever and not even for restitution of the price herein paid in case of loss the above-described three promissory notes of two thousand six hundred and sixty-six $66\frac{2}{3}$-100 dollars each, drawn by said Mrs. Dora L. Stark, and the above-described three notes of said Mrs. Fanny B. Randolph of like amount.

And in order to enable the said G. W. Sentell & Co. in liq.
72 to obtain and receive the amount of said six promissory notes, with all interest due and to become due thereon, and also any and all costs, charges, expenses, or lawyer's fees that are or may become due thereon under and by virtue of the aforesaid act passed before me, notary, on the fifteenth day of May last past, and the aforesaid act passed before said notary, Gremillion, on the nineteenth day of May last past, as well as under said legal proceedings had in the aforesaid suits Nos. 5655 and 5666 of the seventh judicial district court for the parish of Avoyelles or the judgments rendered thereon, the said Johnson & Goodrich moreover declared that they do by these presents transfer, assign, and set over unto the said G. W. Sentell & Co. in liq. all and singular the rights, privileges, actions, interests, claims, and demands of every nature and kind whatsoever which they, said Johnson & Goodrich, or either of them, have or may have in and to the above-described six promissory notes, and especially in and to the several mortgages securing their payment as aforesaid, and also subrogates said G. W. Sentell & Co. in liq. to any and all rights, actions, privileges, liens, or mortgages secured by or resulting from the aforesaid several acts or mortgages, judgments, &c., secured by or resulting from the aforesaid several acts or mortgages, judgments, &c., with full power to exercise and enforce the same as Johnson & Goodrich might or could have done.

Thus done and passed, in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conand, witnesses, both of this city, who hereunto sign their names with the parties and
me, the said notary, the day and date aforesaid, and it is
73 understood that said G. W. Sentell — in liq. do not release any of their rights as holders of said drafts or note against the other parties thereto.

(Original signed.)

W. A. JOHNSON.
FRED. M. GOODRICH.
G. W. SENTELL.
ANDREW HERO, JR.,
*Not Pub.*

P. A. CONAND.
GEO. CENAS.

A true copy of the original on file in my office.
New Orleans, May 14th, A. D. 1886.

[SEAL.] (Signed) ANDREW HERO, JR., *Not Pub.*

*Certified Copy of Act of Mortgage Passed Before Ed. de Generes, Not. Pub., Jan. 15th, 1868, Marked Exhibit No. 4.*

Fanny B. Randolph, Miss Dora Lambeth to Mrs. Widow John Rhea.

STATE OF LOUISIANA,
*Parish of Avoyelles.*

Be it known that this day before me, Edward de Generes, notary public in and for the said State and parish, duly commis-
74 sioned and qualified—

Personally came Mistress Fanny B. Lambeth, wife of Christopher M. Randolph, by him authorized, and Miss Dora Lambeth, all of this parish, who severally declared that they are indebted unto Mrs. Rosetta Groves, widow of thelate John Rhea, of Madison county, State of Indiana, in the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, being balance due by them for the purchase price of certain movable property, mules, canes, &c., &c., which belonged to said Rhea at the time of his death and which was upon the Leinster plantation (owned by said Mrs. Randolph and Miss Lambeth) and the ownership of which described movable property descended to said Widow Rhea as the sole heir-at-law of her said husband in default of children and father and mother according to the laws of the State of Indiana, where said Rhea had his domicile at and for some time proceeding his death.

That the price agreed to be paid for said movable property was the sum of thirteen thousand four hundred and seventy and $\frac{12}{100}$ dollars ---------- $13,470 12

From which is to be deducted the amount due by said Rhea for rent of said Leinster plantation for the year 1867 and for the securing whereof they have the privilege of lessor (all others for laborers, wages, &c., being extinguished) upon all said property, four thousand five hundred dollars ---------- 4,500

Leaving the said balance of eight thousand nine hundred and seventy and $\frac{12}{100}$ dollars ---------- $8,970 12

due by them, which they promise to pay to said Mrs. Rhea
75 in two years from 1st of January, 1868, and to represent said sum they have made their certain promissory note, dated this day, payable at the Citizens' Bank of Louisiana, in the city of New Orleans, on the first day of January, eighteen hundred and seventy, to the order of said Mrs. Rosetta Rhea for said sum, and bearing interest at the rate of eight per cent. per annum from date until paid, and which note is not *is not* to be negotiable except upon compliance by said Mrs. Rhea with the conditions hereinafter stipulated, and which after being be me, notary, paraphed to identify it with this act is delivered to Mr. Jerome B. Vanhorn, herein representing said Mrs. Rhea as her attorney-in-fact by virtue of a power of attorney hereto annexed, and the said Jerome B. Vanhorn herein

represented by substitution of Joseph O. Corryolles, as per act of procuration hereto annexed and here present, who acknowledges receipt thereof.

It is hereby stipulated between the parties that said Mrs. Rhea is to procure a judicial recognition of her right to the estate of her said late husband as his sole heir and an order putting her in possession as such of all his estate or furnish conclusive proof to the satisfaction of said Mrs. Randolph and Miss Lambeth of her being his sole heir or extinguish opposing claims, if such there should be, and that until said condition be complied with by Mrs. Rhea that payment of said note is not to be demanded nor the title to said note transferred until such compliance, and that any transfer or negotiation thereof shall only be valid after the performace of such conditions.

In order to secure unto said Mrs. Rhea the payment of
76 said debt and said note evidencing the same the said Mrs. Randolph and Miss Lambeth do hereby mortgage to and in favor of said Mrs. Rhea, herein represented, as above stated, by her attorney-in-fact, said Joseph O. Correjolles, here present and accepting:

1st. That certain plantation or tract of land known as the "Leinster plantation," situated on Bayou Huffpower and Bayou Clair, in this said parish of Avoyelles, containing two thousand four hundred and five acres, more or less, being composed of the following subdivision- of land according to the surveys of the United States Land Office Department, viz:

Lots Nos. one and three of section thirteen.

East half of southeast quarter and east half of southwest quarter of section fourteen.

West half of southeast quarter of section fifteen.

Lots Nos. one and six of section twenty-two.

Lower half of lot No. three of section twenty-two.

West half of northeast quarter of section twenty-two.

Lots Nos. one, two, three, and four of section twenty-three.

Lot No. one of section twenty-four.

Lot No. four of section twenty-six.

Lots Nos. one, six, and seven of section twenty-seven.

West half of section thirty-four, southeast quarter of section thirty-four.

West half of northeast quarter of section thirty-four.

East half of northeast quarter of section thirty-four.

West half of northwest quarter of section thirty-five.

West half of southwest quarter of section thirty-five.

77 All of said lots or parcels of land being situated in township one south of range three east.

2nd. A certain tract of land adjoining the said Leinster plantation, known as the "Falkland tract," containing five hundred and eighty acres (580).

The land firstly described was purchased from I. K. Elgee by the late Mr. Wm. M. Lambeth in 1844, half of which was afterwards conveyed by Mrs. M. A. Wells, and by act of 22nd of January, 1853,

before R. L. Taliaferro, notary public in this parish, was reconveyed to said Lambeth, by which act the tract secondly described was also conveyed to him, having been purchased by said Mrs. Wells and Mrs. Lambeth from Mrs. Dereé Tanner by act of 22nd April, 1852, before J. W. Pearve, then notary in said parish of Avoyelles, and all of said lands were inherited by said Mrs. Randolph and said Miss Lambeth as only heirs of their father, the late Wm. M. Lambeth, duly recognized as such and placed in possession by orders rendered by the second district court of New Orleans in the succession of their said father, No. 6286 of the docket.

By reference to the annexed certificate of the recorder of the parish of Avoyelles it appears that there are no mortgage- or encumbrances standing recorded against said property.

The act of procuration of Mrs. Rhea to Jerome B. Vanhorn and the act of procuration of Jerome B. Vanhorn substituting Joseph O. Correjolles have been — *ne varietur* of date by me, notary.

And to this act is also annexed as evidence of the indebtedness averred the bill of purchase of the movable property as above,
78 which is also paraphed *ne varietur* of date.

Thus done and passed at the Leinster plantation, in the parish of Avoyelles, on the first day of January, anno Domini one thousand eight hundred and sixty-eight, in the presence of Lorenzo Scofield and Ewell Bundick, both competent witnesses, who hereto sign with me, the undersigned notary.

FANNY B. RANDOLPH.
C. M. RANDOLPH.
DORA LAMBETH.
JOSEPH O. CORREJOLLES,
*Att'y-in-Fact.*
EDOUARD DE GÉNÉRÈS,
*Not. Pub.*

Witnesses:
L. SCOFIELD.
EWELL BUNDICK.

$9.00 stamps affixed, according to law.
EDUARD DE GENERES.

Filed January 18th, 1868.
(Signed) L. V. GREMILLION, *Recorder.*

Filed for reinscription August 20th, 1877.
J. A. MORROW,
*D'y Recorder.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify that the foregoing is a true and correct copy of the original on file and of record in my office.

Given under my hand and seal of office, at Marksville, La., on the 17th day of May, A. D. 1886.

[SEAL.] (Signed) A. J. LAFARGNE,
*Clerk of Court, Avoyelles.*

79 *Certified Copy of Act of Partition Between Mrs. Randolph and Mrs. Stark, Dated Jan. 9th, 1873, Marked Exhibit No. 5.*

Mrs. F. B. Randolph & Mrs. & Mr. T. O. Stark.

We have, in conformity with your request, made the following appraisement of your property, comprising the Leinster and Dora plantations, in the subdivisions requested, viz:

That part of Leinster plantation contained in the sugar-house field and between the four (4) public roads surrounding it (exclusive of the lakes), at $40 per acre. This valuation is made with reference to the improvements in sugar-house, machinery, and buildings thereon. Some of the land is not worth so much, but is made so by the improvements in sugar-house, &c.

The lands to the north of the road leading from Stewart's to Marksville and on the west of the Marksville road we appraise at $25 per acre for the cleared land and at $10 per acre for the woodland.

The land in sections 34 & 38 south of the road leading from John Ewell'- to Frith's we appraise at $25 per acre for the cleared land under fence, at $20 per acre for cleared land not under fence, and at $10 for the woodland p'r acre.

The land to the east of the public road leading towards Marksville and in sections 23, 13, and 14 we appraise at $10 per acre, being woodland, with the exception of the Hicks field, unfenced, and a small field occupied by John Breeler.

80 The vacuum pan (copper) and the tanks and clarifiers connected with it are appraised at $1,500.

The Dora plantation for that part in the sugar-house field and the field south of the bayou cleared and under fence we appraise at $40 p'r acre, the cleared land on the opposite side of the bayou to the sugar-house we appraise at $25 p'r acre, and the woodland belonging to the plantation, including the Boyce and Coco tracts, we appraise at $10 p'r acre, referring you to the subjoined sheet for calculations of the value of the respective plantations in accordance with the foregoing appraisements.

Respectfully submitted.

(Signed) —— JIRON.
JOS. CAPPEL.
WM. H. WINN.

Whereas the subscribers, Fanny B. Randolph and Dora L. Stark, being desirous of dividing their joint property, requested Messrs. M. Wells, R. R. Iiron, Joseph Cappel, and Wm. H. Winn or any three of them to make an appraisement of the Leinster and Dora plantations in the mode requested, a copy of their letter containing

their said request and the report of Messrs. Irion, Cappel, and Winn being hereto attached; and whereas it appears from the annexed plan of Leinster plantation made by M. Bennett that there is contained in the sugar-house field on Leinster plantation and in the lands to the north of it and west of the public road leading past Stanley's saw-mill to Marksville, being one lot, as follows, section No. 27, acres, 633.88.

| | | |
|---|---|---|
| 81 | Less that part west of fence in public road 18 | 615.88 |
| | Less contained in Tanner's lake | 126 |
| | | 489.88 |
| | West of S. W. qr. of sec. 26 | 80.56 |
| | Lot 5 of section 22 | 92 |
| | Lot 6 " 22 | 108.20 |
| | That part of E. ½ of lot 3 of sec. 12 south of Bayou Huffpower | 16.82 |
| | That part of lots 1 and 2 do. do. | 45.84 |
| | That part of sec. 21 east of public road | 13.44 |
| | Total in sugar-house field—acres | 846.74 |
| | To the north of sugar-house field and cleared and fenced, 16.82; part of E. ½ of lot 3 and part of lots 1 and 2, 66.10; 36.44 | 119.36 |
| | Woodland to the north of sugar-house field and west of the public road leading to Marksville, west ½ of S. E. qr. of section 15 | 77.76 |
| | East ¼ of S. W. qr. of sec. 14 | 80.86 |
| | S. W. ¼ of S. E. qr. " 14 | 40.00 |
| | That part of east half of S. E. qr. of section 14 lying west of public road | 20.50 |
| | 48 55 75 | |
| | That part of lots 1, 2, and 3 lying north and west of pubic road | 178 |
| | Total acres | 396.62 |

Lot number two.

| | | |
|---|---|---|
| | Lot 1 of section 13 | 39.68 |
| 82 | Lot 2 of section 13 | 116.36 |
| | Lot 1 " 24 | 28.82 |
| | That part of S. E. qr. of section 14 east of public road | 61.64 |
| | That part of lots 1, 2, and 3, section 23, southeast of public road | 80.52 |
| | Lot No. 4 of section 23 | 96 |
| | | 423.02 |

Lot No. three.

| | | |
|---|---|---|
| Cleared and under fence in section 34 | | 260.81 |
| Cleared but not fenced in " 34 | | 44.80 |
| " " " 35 | | 88.44 |
| Woodland in section 34 | 236.96 | |
| " " 35 | 65.15 | |
| | | 302.11 |

Lot number four, Dora.

| | |
|---|---|
| Sugar-house field and south of bayou, that part of N. ½ of sec. 8 and part of lots 4, 9, and 5, south of Bayou Rouge | 389 |

Lot number four (4), Dora.

| | |
|---|---|
| Cleared land south of bayou | 389 |

Cleared land north of bayou.

| | | |
|---|---|---|
| Part of section 8 | 4 | |
| Part of section- 5 and 6 | 93 | |
| | | 97 |

Woodland.

| | | | |
|---|---|---|---|
| Part of so'east qr. and so. half no'east qr. of section 6 | | 156 | |
| 83 Part of so'west qr. of sec. 5 | | 42 | |
| Part of no'west " 5 | | 30 | |
| Lot No. 6 of sec. 5 | | 76.41 | |
| In section 8 | | 12 | |
| | | 316.41 | |
| Bayou & Coco tracts | | 264.76 | |
| | | | 581.17 |

*Recapitulation.*

| | |
|---|---|
| Value of lot No. 1, sugar-house field: | |
| Leinster, 846.74 acres, at $40 pr. acre | $33,869 60 |
| Marshall field, part of lots 1, 2, and 3 of S. 22, 119.36, at $25 pr. acre | 2,984 00 |
| Woodland in lot one, 396.62, at $10 | 3,966 20 |
| | $40,819 80 |

Lot No. two.

| | |
|---|---|
| Woodland, 423.02 acres, at $10 | 4,230 20 |

Lot. No. three.

| | |
|---|---|
| Land cleared and under fence, 260.81, at 25 | 6,520 25 |
| Land cleaned, but not fenced, 133.24, at 20 | 2,664 80 |
| Woodland, in sec. 34 and 35, 302.11, at 10 | 3,021 10 |
| | $12,206 15 |

Lot No. four.

| | | | |
|---|---|---|---|
| Cleared land south of bayou, 389, at | | | 15,560 |
| Cleared land on north side of bayou, 97, at 25 | | | 2,425 |
| Woodland north of bayou and sugar-house | 316.41 | | |
| Boyce tract, N. E. qr. sec. 17 | 160 | | |
| Coco tract, west half of west half so'west qr. of sec. 9 and 24 acres to east of that west half | 104.76 | | |
| | 581.17, at 10, | | 5,811 70 |
| | | | $23,796 70 |
| Leinster lot No. 1 | 40,819 80 | | |
| 2 | 4,230 20 | | |
| Walnut field in S. 34 and 35 | 12,206 15 | | |
| | | | 57,256 15 |
| Dora plantation | | | 23,796 70 |
| | | | $81,052 85 |
| One-half | | | $40,526 43 |

The said Mrs. Randolph takes as her part and share in the division lot No. one, containing the sugar-house field or Leinster plantation, and lands north of it and west of the public road leading to Marksville, appraised at forty thousand eight hundred and nineteen $\frac{80}{100}$ dollars ($40,819.80).

And the said Mrs. Stark takes as her share in the division lots No. 2, being that part of Leinster in sections 13, 14, 23, and 34 south and east of the public road leading past Stanley's mill, towards Marksville, valued at forty-two hundred and thirty $\frac{20}{100}$ dollars, $4,230.20.

Lot No. 3, being that part of Leinster plantation in sections 34 and 35, valued at twelve thousand two hundred and six $\frac{15}{100}$ dollars, $12,206.15.

Dora plantation, in sections 5, 6, 8, 9, and 17 as detailed,
85 appraised at twenty-three thousand seven hundred and ninety-six $\frac{70}{100}$ dollars, $23,796.76; total, $40,233.05.

And the said several parties do hereby mutually abandon to each other the undivided half now owned by them in the respective lots of land hereby taken by each respectively in full ownership—that is to say, Mrs. Randolph cedes and abandons to said Mrs. Stark the undivided half of Dora plantation and that part of Leinster plantation in sections 34 and 35 and east and south of the road leading past Stanley's mill toward Marksville.

And the said Mrs. Stark cedes and abandons to said Mrs. Randolph the undivided half in Leinster sugar-house field and lands

north and west of the public road, contained in lot firstly described, the word east interlined.

January 9th, 1873.

F. B. RANDOLPH.
DORA L. STARK.
T. O. STARK.

Witness:
A. C. TOWNSEN.

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office in Alienation Book M M, folio 384 *et seq.*, filed Feb'y 1st, 1873.

86 Given under my hand and seal of office, at Marksville, Avoyelles parish, Louisiana, on this 22d day of May, A. D. 1886.

[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk and Recorder.*

Record of suit No. 11293 of the docket of this court, styled Martha Groves *et al. vs.* G. W. Sentell, marked Exhibit No. 6.

*Copy of Petition. Filed April 1st,* 1886.

MARTHA GROVES *et al.* }
*vs.* } No. 11293.
G. W. SENTELL. }

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana:

The petition of Martha Groves, a citizen of the State of Indiana, and of William J. Groves, a citizen of the State of Ohio, respectfully represents:

That George W. Sentell, a citizen of the State of Louisiana and a resident of New Orleans, is justly and truly indebted into your petitioners in the sum of four thousand eight hundred and seventy-three dollars, with interest thereon at eight per cent. per an-

87 num from March 5, 1884, until paid, for this, to wit, that petitioners are the sole residuary legatees of the late Rosetta Rhea, and have been recognized as such by decree of the circuit court of Jefferson county, Indiana, and as such are the holders and owners of the following-described note and of the mortgage securing the same, viz., note dated Avoyelles, La., Leinster plantation, January 1st, 1868, for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, due two years after date to the order of Rosetta Rhea, with interest at the rate of eight per cent. per annum from its date until paid, drawn by Fanny B. Randolph and Dora Lambeth, which note has been reduced by partial payments to four thousand eight hundred and seventy-three dollars, with interest at eight per

cent. per annum from March 5, 1884; and that to secure the payment of said note the makers thereof, by act passed January 1st, 1868, before Edward de Générés, a notary public for the parish of Avoyelles, Louisiana, mortgaged the following-described property, viz:

(1.) That certain plantation or tract of land known as the "Leinster plantation," situated on Bayou Huffpower and Bayou Clair, in the said parish of Avoyelles, containing two thousand four hundred and five acres, more or less, being composed of the following subdivisions of land according to the surveys of. the United States Land Office Department, viz:

Lots Nos. one and three of section thirteen, east half of southeast quarter and east half of southwest quarter of section fourteen.

West half of southeast quarter of section fifteen.

88 Lots Nos. one and six of section twenty-two.

Lower half of lot No. 3 of section twenty-two.

West half of northeast quarter of section twenty-two.

Lots Nos. one, two, three, and four of section twenty-three.

Lot No. one of section twenty-four.

Lot No. four of section twenty-six.

Lots Nos. one, six, and seven of section twenty-seven.

West half of section thirty-four.

Southeast quarter of section thirty-four.

West half of northeast quarter of section thirty-four.

East half of northeast quarter of section thirty-four.

West half of northwest quarter of section thirty-five.

West half of southwest quarter of section thirty-five.

All of said lots or parcels of land being situated in township one south, of range three east.

(2.) A certain tract of land adjoining the said Leinster plantation known as the Falkland tract, containing five hundred and eighty acres.

And that said Rosetta Rhea was duly recognized as the heir of her husband, John Rhea, by the common pleas court of Jefferson county, Indiana.

All of which will fully appear by reference to the duly authenticated copies of the decree of court recognizing petitioners as said legatees, and of the will of the late Rosetta Rhea and of the letters of administration on her estate, and of the order recognizing her as heirs of her husband, and by reference to said note and

89 to the authentic copy of said act of mortgage, which are hereunto annexed and made part of this and are marked Exhibits A, B, C, D, & E respectively.

That on March 1, 1884, at a sale made by the sheriff of the parish of Avoyelles in the suit of G. W. Sentell and *als. vs.* Fanny B. Randolph & *als.*, No. 7049 of 12th district court, parish of Avoyelles, said George W. Sentell purchased the property described in Exhibit F, annexed hereto, and which exhibit is a duly certified copy of the said sheriff's deed to said Santell from the records of the clerk of the court and recorder of the said parish, and which Exhibit F and

Exhibit G (the certified copy of certificate of mortgages referring to said sale) are hereunto annexed as part of this petition.

That the property so purchased by said Sentell at said sheriff's sale is the property upon which said mortgage was granted to secure the payment of the aforesaid note, and said Sentell purchased said property subject to said mortgage, and retained in his hands as part of the price of the property so purchased by him an amount sufficient to pay the balance on said note, and assumed to pay said note and mortgage as part of the purchase price of said property, and has recognized said Rosetta Rhea as owner thereof and entitled to payment of the same.

That the balance now due and owing on said note is four thousand eight hundred and seventy-three dollars and interest thereon, at eight per cent. per annum, from March 5, 1884, until paid, and that said Santell now refuses to pay said amount, notwithstanding amicable demand.

90 That all proper notices and demands as required by law have been given and all legal delays elapsed.

Wherefore petitioners pray that said George W. Sentell be cited to answer this petition, and that after due proceedings there be judgment in favor of petitioners and against said George W. Sentell for the sum of four thousand eight hundred and seventy-three dollars, with interest thereon, at the rate of eight per cent. per annum, from March 5, 1884, untill paid and all costs, and reserving to petitioners their rights to enforce their mortgage and hypothecary rights as to said property as in law or equity they may be entitled.

And petitioners further pray for general and equitable relief.

(Signed) W. S. BENEDICT &
H'Y RENSHAW,
*Att'y for P't'n'rs.*

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, April 1st, 1886.
[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Citation issued to G. W. Sentell.
April 1st, 1886.

91 UNITED STATES OF AMERICA,
*Eastern District of Louisiana.*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

MARTHA GROVES & WM. J. GROVES
*vs.*
GEORGE SENTELL. } No. 11293.

The President of the United States of America to George W. Sentell, New Orleans, Louisiana, Greeting:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation or to de-

liver your answer to the same in the office of the clerk of the circuit of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 1 day of April, A. D. one thousand eight hundred and eighty-six, and of the Independence of the United States of America the 110th year.

Teste:

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

92 *Marshal's Return.*

Received Apr. 1st, 1886, by the U. S. marshal, and on the 2 day of April, 1886, I served a true copy of the within citation and accompanying copy of petition on George W. Sentell by leaving the same at his domicil, 154 Chestnut St., in the hands of his wife, who informed me she was the wife of Geo. W. Sentell and he was sick in bed at time of service, she being apparently over 14 years of age, and said service being made at their common domicile, 154 Chestnut St., in the city of New Orleans.

(Signed) R. B. PLEASANTS,
*U. S. Marshal, E. D. of La.*
JNO. BAKER,
*Deputy U. S. Marshal.*

*Original Letter of Merrick, Foster & Merrick, Att'ys of Mrs. F. B. Randolph, to G. W. Sentell, Marked Exhibit No. 7.*

NEW ORLEANS, *April* 9, 1886.

Geo. W. Sentell, Esq.

DEAR SIR: We have been informed that Martha and W. J. Groves have brought suit against you for a sum of money left in your hands at the sale of the Leinster plantation, &c., made by the sheriff of Avoyelles parish at your instance.

93 The suit to which we refer is suit No. 11293 of the U. S. circuit court of eastern dist. of La., in which the Groves are plaintiffs. The object of this letter is to notify you *not* to pay said sum to said plaintiffs, as it does not belong to them, and that the whole of the money left in the hands of the purchaser belongs to Mrs. Fanny B. Randolph, who was a party to the mortgage suit.

Very respectfully yours, &c.,

(Signed) MERRICK, FOSTER & MERRICK,
*Att'ys for Mrs. F. B. Randolph.*

*Original Letter of W. B. McLean, Liquidator and Testamentary Executor of Benjamin Conyers, Marked Exhibit No. 8.*

NEW ORLEANS, LA., *May 1st*, '86.

Mr. G. W. Sentell, city.

DEAR SIR: Please take notice that, as liquidator of the late firm of G. W. Sentell & Co., composed of yourself and the late Benjamin Conyers, and as testamentary executor of said Conyers, I claim the entire amount of the purchase price retained in your hands for the payment of the property purchased by you at sheriff's sale in
94 the parish of Avoyelles, in this State, in the suit No. 7049 of the docket of the twelfth district court of Louisiana, on March 1st, 1884, known as the Leinster plantation, said money belonging to said firm, in liquidation, and one-half thereof, therefore, belonging to the estate of said Conyers.

You are accordingly notified not to pay said money to Martha Groves and William J. Groves or either of them, notwithstanding they have instituted a suit against you therefor in the U. S. circuit court for the eastern district of Louisiana, No. 11293 of the docket of said court.

Yours respectfully,

(Signed) WM. B. McLEAN,
*Liquidator of G. W. Sentell & Co., in Liquidation, and Testamentary Executor of Benjamin Conyers.*

Receipt of clerk for deposit of fund in registry, marked Exhibit "B." See page 10 of this transcript.

*W. B. McLean's Evidence.*

Offerings made by G. W. Sentell, being pages 56 to 94, inclusive, and also offerings by Mrs. F. B. Randolph, pages 123 to 208, inclusive.

95 Certified copies of petition, answers, judgment, writ of *fieri facias*, notice of seizure, appraisement, and return on writ of *fieri facias* in suit No. 7049 of the district court of the parish of Avoyelles, styled G. W. Sentell *et al. vs.* Fanny B. Randolph *et al.*, marked Exhibit "P."

*Petition. Filed October 29, 1883.*

To the honorable the judge of the twelfth judicial district, sitting in and for the parish of Avoyelles, State of Louisiana:

The petition of Geo. W. Sentell and of William B. McLean, testamentary executor of the last will and testament of Benjamin Conyers, deceased, residents of the city of New Orleans, with respect represents—

That Mrs. Fanny B. Lambeth, widow of Christopher M. Randolph, deceased, a resident of the parish of Avoyelles, is indebted to

petitioners in the sum of eight thousand dollars, with eight per cent. yearly interest from the fifth of May, 1875, together with five per cent. attorney's fees on said sum—say six hundred and six and $\frac{25}{100}$ dollars—subject to the following credits, namely: Three hundred and fifty-four and $\frac{66}{100}$ dollars, paid July 12th, 1876; one hundred and fifty-two and $\frac{49}{100}$ dollars, paid October 29th, 1879, and eight hundred dollars, paid November 13th, 1880. Said indebtedness was incurred in this wise, to wit: Mrs. Randolph, being indebted at the date of said notes to Johnson & Goodrich, a commercial firm, domiciled in the city of New Orleans, in the sum of eight thousand dollars, subscribed her three promissory notes, each for the sum of two thousand six hundred and sixty-six and
96 $66\frac{2}{3}$-100 dollars, payable to her own order and by herself endorsed, dated the 15th of May, 1875, and made payable respectively on the first of January, 1876, 1877, and 1878, with eight per cent. per annum interest from the fifth of May, 1875, till paid, as will further appear by reference to said notes, hereto annexed and made a part of this petition.

To secure the payment of the aforesaid notes in capital and interest, together with the aforesaid sum of six hundred and six and $\frac{25}{100}$ dollars attorney's fees, which the said Mrs. Randolph in said act contracted to pay in the event the holder should be at any expense or charge in collecting the same, the said Mrs. Randolph consented to a special mortgage in favor of the said Johnson & Goodrich or any future holder or holders of said notes upon the following-described property, to wit:

1. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clare and the public road leading from Holmesville to Marksville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mill from
97 Holmesville to Marksville, which excepted portions do not belong to the said Mrs. Randolph.

2. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section No. twenty-seven, the north half of the southwest quarter of section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggre-

gate nine hundred and thirty acres, all of which will more fully appear by reference to a certified copy of said act of mortgage, made a part hereof.

Petitioners represent that some time on or about the 2d of June, 1875, and before the maturity of said notes the late commercial firm of G. W. Sentell & Co., then in liquidation and composed of petitioner and the aforesaid Benjamin Conyers, deceased, became the owners and holders for value and in the usual course of business of the aforesaid three promissory notes, the said notes having been assigned and set over to the said Sentell & Co. by the then holders, Johnson & Goodrich, with subrogation to all the rights, privileges, actions, and mortgages accruing or belonging to said Johnson & Goodrich as the holder or holders of said notes; that since
98 the transfer of said notes to said Sentell & Co. the said Mrs. Randolph has repeatedly recognized and promised to pay the same; that she recognized and promise- to pay the first of said notes in the order of maturity on the 13th of November, 1880, and the remaining two on the 17th of December, 1880.

Petitioners further represent that the aforesaid act of mortgage so granted by the said Mrs. Randolph to Johnson & Goodrich contains the pact *de non alienando;* that said mortgage was duly inscribed in the proper mortgage book for the parish of Avoyelles, where all of the above-described property is situated; that since said mortgage was granted and since its inscription as aforesaid the said Mrs. Randolph sold to one Ernest Th. Genert, a resident of the parish of Avoyelles, the undivided half of the hereinbefore first described tract or parcel of land, as also the undivided half of the improvements thereon, known as the Leinster plantation; that said property passed into the hands of said Genert burdened with petitioners' mortgage, and said Gennert acquired such title as he holds with notice of the non-alienation clause contained in said act of mortgage from said Mrs. Randolph to Johnson & Goodrich.

Petitioners further represent that since the firm of Sentell & Co. became the holders of said notes Benjamin Conyers, one of the members of said firm, departed this life, and his succession is now represented by the aforesaid William McLean as testamentary executor. Alleging amicable demand without effect, petitioners pray that the said Fanny B. Lambeth, widow of Christopher M. Randolph, and the said Ernest Th. Gennert be cited each to answer hereto, and, after the legal delays have expired, that they may
99 have and recover judgment against the said Mrs. Randolph for the sum of eight thousand dollars, with eight per cent. per annum interest thereon from the fifth of May, 1875, till paid, together with the further sum of six hundred and six and $\frac{25}{100}$ dollars for attorney's fees, subject to the credits aforesaid.

And petitioners further pray that they may have judgment against both the said Mrs. Randolph and the said Gennert recognizing and affirming their special mortgage on the aforedescribed property, and that said mortgage be enforced against said property and the same be seized and sold to pay the aforesaid indebtedness.

And petitioners further pray for all other orders and services necessary in the premises, for costs, and for general relief.

By their attorneys, THOMAS OVATON.
W. HALL.

A true copy.
Attest: T. J. ARMITAGE,
[SEAL.] *Deputy Clerk.*

*Answer of Ernest Th. Gennert. Filed Dec'r 8th*, 1883.

G. W. SENTELL & *als.*
*vs.*
Mrs. FANNIE B. RANDOLPH *et als.* } No. 7049.

AVOYELLES:

100 Now into court comes Ernest Th. Gennert, by his undersigned counsel, and, having been made a party to this cause by service of petition and citation to answer to the demands of the plaintiffs, answers thereto as follows, to wit: First he says that, whilst it may be true that pl't'ffs have a special mortgage on the property known as the Leinster plantation and described in their petition and one undivided half of which belongs by purchase to this respondent made by him of Mrs. Widow Fannie B. Randolph, as appears by notarial act passed before Louis V. Gremillion, clerk of the district court and *ex officio* notary public in and for the parish of Avoyelles, State of Louisiana, on the 7th June, A. D. 1882, in said parish and State, represents that he is in full possession of said property as the owner *bona fide* thereof; represents that he has made several valuable improvements on the place at his personal expense, amounting to about five thousand dollars, since he took possession thereof, and that he did so under the guarantees of Mrs. Randolph, with whom he entered into a partnership contract on the said 7th day of June, A. D. 1882, the objects of which were to restore the Leinster plantation aforesaid, reconstruct the sugar-house thereon, convert it into a central sugar factory, restore the cotton gin on the place, establish a cotton-seed-oil mill, and to do such other things as might appear advantageous and profitable in connection with and pertaining to a sugar and cotton plantation; that said contract of partnership was to continue under the sole control and management of your respondent from the said 7th day of June to December 31st, A. D. 1886, unless sooner dissolved by death
101 or by mutual consent; that your respondent has conformed with all the stipulations of said act of partnership agreement by which he assumed any obligations unto the said Mrs. Fannie B. Randolph or otherwise according to the terms and conditions thereof down to the seventh day of November, A. D. 1883, and ever since as far as the conduct of said Mrs. Randolph left it possible for him to do so; that on that day she malicious- and designedly took out of your honorable court, in the suit entitled Mrs. Fanny B. Randolph *vs.* Ernest Th. Gennert, No. 7054, an order of seizure and

sale, directed to and placed in the hands of Leon Gauthier, sheriff of Avoyelles, without any legal or equitable right thereto growing out of any dereliction of duty or default of obligation on the part of this respondent to her, directing and ordering him, the said sheriff, to seize the land she had sold unto this respondent on the 7th day of June, A. D. 1882, and fully described in her petition in that case, a certified copy of which is made a part of this answer for proof and greater certainty; that the notice of the sheriff under said writ was served on this respondent on the 7th day of Nov., A. D. 1883, at his place of business on the Leinster plantation. Your respondent, further answering, — that the effect of this wrongful proceeding on the part of the said Mrs. Randolph was to interrupt his operations under his said contract of partnership—in fact, to break them up—by demoralizing the laborers employed on the said plantation, causing great waste in the cane crop, much of which was at that time cut and at the cane shed on said place, much of which was cut and still in the field, not hauled; that in consequence of the said illegal proceedings of the said Mrs.
102 Randolph many of the laborers, fearing they would not be paid, refused to work at all, while others suspended their work for awhile; that the weather became very inclement and cold, causing great waste or deterioration in and of the said cane, amounting to about ten hhds. of sugar and fifteen bbls. of molasses, worth together one thousand dollars.

Respondent further represents that another result of said illegal proceeding was the abrupt termination of respondent's credit with his commission merchant, to wit, Horace J. Levi, of New Orleans, who down to that time had made respondent advances of money, plantation supplies, and necessary provisions to carry on the said partnership business of the said Leinster plantation; that owing to said interruption and termination of his credit as just stated your petitioner was unable to hire hands for the purposes aforesaid, and that she thereby caused him further damages in the sum of five thousand dollars, inasmuch as it prevents him from carrying on the operations of the said plantation under his agreement with said Mrs. Randolph during the remaining period of his said partnership, say during the years A. D. 1884 and 1885 to the first day of January, A. D. 1886.

Your petitioner further answers and says that he did make the purchase of one-half of the said Leinster plantation, as alleged by plaintiff, under certain assurances as to the amount of mortgages existing thereon by the contracts of said Mrs. Randolph, but that on the same day of said act of sale and, in reality, supplemental thereto and to the said agreement of partnership he entered
103 into another contract with her in writing by the terms and conditions of which Mrs. R. was to and did "assume all the indebtedness and liabilities over and above fourteen thousand dollars on said Leinster plantation herself and alone" and your respondent one-half of a similar sum, say, $7,000."

That she has failed to comply with her contract in respect of this stipulation.

That she assumed and obligated herself to procure the free and complete title to the Tanner lake, situated on said plantation, at her own and exclusive cost, and sold an undivided half thereof, with the Leinster plantation, to your respondent by the said supplemental act on the said 7th day of June, A. D. 1882; that she obligated herself to do so, as above set forth, within three months after the said 7th day of June, 1883.

That *he* failed to comply with this stipulation also, and has never either procured the said title to the said lake or conveyed a half or any portion thereof unto your petitioner.

Respondent now further represents that in selling and conveying unto him the half of the Leinster plantation described in her petition she gave your respondent, his heirs and assigns, a full warranty and obligated herself to "forever defend against the lawful claims of all persons whomsoever." This she has not done, as this cause fully demonstrates.

Your respondent further answers and says that the notes herein sued and sought to be enforced are also secured by a special mortgage given by the said Mrs. Randolph by an act passed in New Orleans, La., before Andrew Hero, Jr., not. pub. in and for the parish of Orleans, State of Louisiana, on the 15th day of May,
104 A. D. 1875, in favor of Messrs. Johnson & Goodrich, bearing on the following-described property, "an undivided half part, share, and interest of, in, and to all and singular all the tracts or parcels of land situated in the parish of Avoyelles, La., on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing the aggregate nine hundred and thirty acres," as will fully appear by reference to the certified copy of act of mortgage on file in this case. Respondent says there has never been any renunciation of the right of discipline on the part of the said Mrs. Randolph, and that as your respondent has her warranty to the full extent of law in such cases, and as the sale of the said property he has purchased is for a greater sum than is necessarily due thereon, and as the said Mrs. Randolph, by grievance and collusion, takes no measures to have said described property as well as the Leinster plantation sold your respondent is entitled to have the same subjected to seizure to at least the part payment of such amount as may be found due the plaintiffs herein.

Further answering, he says that he has reason to believe, and therefore avers, that partial payments have been made on the notes sued on; the precise figures he has no means of knowing; that to ascertain what sums have been paid your respondent pro-
105 pounds the following questions on facts and articles to said plaintiffs, the answers to which are to be used in evidence on behalf of respondent on the trial of this cause:

To G. W. SENTELL and to W. B. McLEAN, testamentary executor of Benj. Conyers, dec'd, pl'ff- herein:

Int'y 1st. Has not a sum or sums of money been paid to you or one of you or to the late Benjamin Conyers, whose estate is represented by Mr. McLean, test'y ex'r, for an account of the indebtedness of Mrs. Randolph, def't herein, and which indebtedness you are seeking — collect by this proceeding?

Int'y 2. If you answer that any part of said indebtedness has ever been paid, please state by whom paid, how much was paid, and when paid.

Int'y 3. How much remains due on the notes sued on herein? State with precision.

And, further answering, your respondent says that the said Mrs. Randolph sold to him by the said act of June 7, 1882, an undivided half of the buildings and improvements, machinery, etc.; that in all her obligations to this respondent she has failed.

Wherefore, the premises all and singular duly considered, your respondent prays—

1st. That whatever judgment your honorable court may render against and affecting the interests of this respondent in and to the property sought to be made responsible for the debt that may be found due to plaintiffs, and which property was sold by said Mrs. F. B. Randolph on the 7th June, A. D. 1882, your respondent have judgment of his said warrantor *pro tanto*.

2nd. He prays that Mrs. F. B. Randolph be cited as his
106 warrantor in the premises and served with a copy of this answer and demand in warranty; that the nine hundred and thirty acres of land described under art. 2nd in the act of mortgage given by Mrs. F. B. Randolph to Messrs. Johnson & Goodrich by notarial act passed before Andrew Hero, Jr., not. public, dated 15th May, A. D. 1875, and which land is equally with the Leinster plantation liable for the debt sued on, be discussed and ordered to be sold simultaneously for the payment thereof. He further prays that he have judgment of Mrs. Randolph aforesaid for the value of all improvements he has placed on the Leinster plantation—say five thousand dollars; that he have judgment also for one thousand dollars for losses to the crop of the present year caused by her malicious and wrongful proceedings in suit No. 7054 of this court, entitled Mrs. Fannie B. Randolph *vs.* Ernest Th. Gennert; also judgment of her for the sum of five thousand dollars for the breaking up of his planting operations on the Leinster plantation under the terms of his written act of partnership with her and for the consequent destruction of his personal credit with his commission —, H. J. Levy, of New Orleans, La. He prays for judgment of the said Mrs. Randolph for the value of one-half of what is known as the Tanner lake, the title to which she obligated herself as aforesaid to convey to this respondent free of charge and failed to do. He prays that the plaintiffs herein be required to answer on oath in open court the facts and articles to them propounded categorically, to the end that the answers thereto may be used as evidence on behalf of

this respondent on the trial of this cause; and, finally, he prays
107 that, inasmuch as the said Mrs. Fannie B. Randolph has failed to fully or even partially to warrant your respondent and to hold him secure against the lawful claims of the pl't'ffs in this cause (and this is made in the form of allegation), she be condemned to pay unto your respondent the further sum of five hundred dollars as att'y's fees necessarily to be paid by him in consequence of her enumerated and specified violation of contracts with him and derelictions of duty in the premises all and singular. He prays also for legal interest from date of this demand upon her on all sums that may, upon the trial hereof, be found and determined to be due by the said Mrs. Fannie B. Randolph and for general relief in the premises.

(Signed) By his counsel, CULLOM & COCO, *Att'ys.*

Personally came and appeared in open court Ernest Th. Gennert, one of the defendants in this case, who, being first duly sworn, says that the answers to the interrogatories propounded to him in this case are material to his cause and will assist him in his defense.

(Signed) ERNEST TH. GENNERT.

Sworn to and subscribed before me this 10th day of December, A. D. 1883.

(Signed) L. V. GREMILLION, *Clerk.*

108 A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE, *D'y Clerk.*

*Answer of Mrs. Fanny B. Randolph. Filed Dec.* 11, 1883.

G. W. SENTEL *et al.*
*vs.*
Mrs. FANNY B. RANDOLPH. } No. 7049.

Now into court, by her undersigned counsel, comes Mrs. Fanny B. Randolph and to so much of the pleading in the above numbered and entitled suit filed by her codefendant, Ernest Th. Gennert, as is intended or may be considered to be a call or demand in warranty against her pleads—

That said pleading discloses no cause of call or demand in warranty against her; and, further, she denies all and singular the averments of said pleading tending to show liability on her part to said Gennert for pretended breaches of partnership or other contracts for instituting any lawsuit or suits or legal proceedings against him, and she says he has no right to litigate with her or compel her to litigate with him concerning such matters in this suit, and she denies all and singular the averments of said pleading affecting her as vendor of said Gennert or tending in anywise to show any responsibility from her to him.

109 Wherefore she prays that all the demands and calls upon her by said Gennert in said pleading be rejected at the costs

of him, the said Gennert; and she prays for all such further orders and decrees as the nature of the case requires and the law and equity permit.

(Signed) THORPE, PETERMAN & THORPE,
*Attorneys for Mrs. Fanny B. Randolph.*

A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

*Affidavit of Ernest Th. Gennert for Continuance. Filed Dec.* 21, 1883.

G. W. SENTELL *et als.*
*vs.*
Mrs. FANNY B. RANDOLPH *et als.* } No. 7049.

In the above entitled and numbered cause Ernest Th. Gennert comes into court and represents that his principal attorney in the said case, E. North Cullom, is now absent through no fault of his and he cannot possibly go to trial in the absence of his said attorney without irreparable loss to himself. He also avers that A. V.
110 Coco, the partner of his said counsel, although in court, he is informed, varily believes, and therefore alleges knows nothing of the facts or particulars of his cause, and he could not for that reason safely entrust same to him. He alleges that this motion is not made for the purpose of delay, but solely to obtain substantial justice, which could not be dealt him in the absence of his attorney. Wherefore he prays that this his motion for a continuance be sustained, and that his cause be continued. He prays for relief.

(Signed) ERNEST TH. GENNERT.

Sworn to and subscribed before me on this 21st day of December, 1883.
[SEAL.] (Signed) L. V. GREMILLION, *Clerk.*

A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

*Judgment. Filed Dec'r* 24, 1883.

G. W. SENTELL *et als.*
*vs.*
Mrs. FANNY B. RANDOLPH. } No. 7049.

111 This case coming on to be tried on issue joined and after due assignment, and the law and the evidence being in favor of plaintiffs' demand, it is by reason thereof ordered, adjudged, and decreed that plaintiffs, George W. Sentell and William B. McLean, testamentary executor of the last will and testament of Benjamin

Conyers, deceased, have and recover judgment against Mrs. Fanny B. Lambeth, widow of Christopher M. Randolph, for the sum of eight thousand dollars, with eight per cent. per annum interest thereon from the fifth of May, 1875, till paid, together with the further sum of six hundred and six dollars and twenty-five cents for attorney's fees, subject to the following credits, to wit: Three hundred and fifty-four dollars and sixty-six cents, paid July 12th, 1876; one hundred and fifty-two dollars and forty-nine cents, paid October 29th, 1879; eight hundred dollars, paid November 13, 1880.

And it is further ordered and decreed that plaintiffs have judgment against the said Mrs. Fanny B. Lambeth, widow aforesaid, and Ernest Th. Gennert recognizing and enforcing their special mortgage on the following-described property to secure the aforesaid sums in principal and interest, to wit:

1. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situate in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres on Bayou Huffpower and Bayou Clear and bounded on the west by Bayou Clear and the public road leading from Holmesville to Marksville,
112 on the south by lands of Boise and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

2°. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres; and it is further ordered, adjudged, and decreed that there be judgment in favor of Mrs. Fanny B. Lambeth, widow, &c., rejecting the call and demand in warranty in this case made and filed against her by Ernest Th. Gennert; and it is further ordered and decreed that the costs of this suit be paid by Mrs. Fanny B. Lambeth as to the main suit upon the mortgage, and as to all costs incurred in the case in warranty, the same to be paid by the said Ernest Th. Gennert.

Thus done, read, and signed in open court this 24th day of
113 December, A. D. 1883.

ARISTIDES BARBIN,
*Judge, 12th Judicial District.*

A true copy.
Attest:
[SEAL.] (Signed) F. J. ARMITAGE, *D'y Clerk.*

*Appraisement.*

GEORGE W. SENTELL & *als.*
*vs.*
F. B. RANDOLPH & *als.*
} No. 7049.

We, the undersinged, do solemnly swear that we will well and truly appraise the property seized in the above-entitled suit to the best of our knowledge and understanding, so help us God.

(Signed) A. M. GREMILLION.
CHAS. F. HERESMAN.

Sworn to and subscribed before me the first day of March, A. D. 1884.

(Signed) LEON GAUTHIER, *Sh'ff.*

114 We, the undersigned, duly appointed and sworn to appraise the property seized in the above-entitled suit, do appraise the same as follow, viz:

A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres on Bayou Huffpower and Bayou Clear, and bounded W. by Bayou Clear and public road leading from Homesville to Marksville, on the S. by lands of Brice & Frith; on the E. by road leading from Homesville to Evergreen and by lands of one Eweli, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in section- thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph, appraised at the sum of seventeen thousand dollars.

2nd. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles on Bayou Jack on Choupique in T. 1 S., R. 5 E., designated and described as the north half of sec. 27, the N. half of S. W. ¼ of said sec. 27, the N. W. ¼ of sec. 30, the S. E. ¼ of sec. 32, the N. ½ of the S. W. ¼ of sec. 28, the S. W. ¼ of N. E. ¼ of sec. 28,

and the undivided ½ of S. W. ¼ of sec. 17, containing in the
115 aggregate nine hundred and thirty acres appraised at the sum of one thousand dollars.

A. M. GREMILLION,
CHAS. F. HERESMAN, *Appraisers.*

A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

*Notice of Seizure to E. Th. Gennert.*

District Court, Parish of Avoyelles.

GEORGE W. SENTELL & *als.*
*vs.*
FANNY B. RANDOLPH & *als.* } No. 7049.

To E. Th. Gennert:

Take notice that in the above case I have seized, to pay and satisfy the sum of eight thousand six hundred and six dollars twenty-five cents, with interest and costs, the following property, to wit:

1. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situate in the parish of Avoyelles, in this State, designated as the Leinster
116 plantation, containing about twenty-seven hundred acres on Bayou Huffpower and Bayou Clear and bounded on the west by Bayou Clear and the public road leading from Holmesville to Marksville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart & Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's Mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

2. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of the said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres.

And unless the same is paid in my hands in three days from the

service of this notice I shall advertise the same, according to law, to be sold at the court-house, in Marksville.

Avoyelles, La., 10th day of January, 1884.

(Signed) T. T. FIELDS,
*Dep'ty Sheriff.*

117 *Sheriff's Return.*

Rec'd on the 9th day of Jan'y, 1884, and on the 10th day of the same month and year I made demand on the defendant to settle this writ or point out property. He failing to comply with either demand, I then duly seized the property described on the within and served a copy thereof on E. Th. Gennert in person. I then appointed Nelson Brown guardian.

Sheriff's office, Jan'y 11th, 1884.

T. T. FIELDS,
*D'y Sheriff.*

Seizure, $2.00.

A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

*Notice of Seizure to Fanny B. Randolph.*

District Court, Parish of Avoyelles.

GEORGE W. SENTELL & *als.*
*vs.*
FANNY B. RANDOLPH & *als.* } No. 7049.

To Fanny B. Randolph:

Take notice that in the above case I have seized to pay and satisfy the sum of eight thousand six hundred and six dol-
118 lars and twenty-five cents, with interest and costs, the following property, to wit:

1. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situate in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres on Bayou Huffpower and Bayou Clear and bounded on the west by Bayou Clear and the public road leading from Holmesville to Marksville, on the south by lands of Brice and Firth, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in section- thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

2. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of the said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-
119 eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres.

And unless the same is paid in my hands in three days from the service of this notice I shall advertise the same, according to law, to be sold at the court-house, in Marksville.

Avoyelles, La., tenth day of January, 1884.

T. T. FIELDS,
*D'y Sheriff.*

*Sheriff's Return.*

Rec'd on the 9th day of January, 1884, and on the 10th day of the same month and year I made demand on Mrs. F. B. Randolph to settle the writ. She having failed to do so, I then made demand on her to point out property to satisfy same, whereupon she pointed out property described on the within notice, which I duly seized and then notified the defendant of said seizure by serving a copy of the within on Mrs. F. B. Randolph in person. I then appointed Nelson Brown guardian.

Sheriff's office, Jan'y 11th, 1884.

T. T. FIELDS, *D'y Sh'ff.*

| | |
|---|---|
| Seizure | 2 00 |
| Mileage | 3 60 |
| | $5 60 |

A true copy.
Attest:
[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

120 *Writ of Fieri Facias.*

District Court, Parish of Avoyelles, State of Louisiana.

To the sheriff of Avoyelles, Greeting:

We command you that by seizure and sale of the property, real and personal, rights, and credits of Mrs. Fanny B. Lambeth, widow of Christopher M. Randolph, and Ernest Th. Gennert, in the manner prescribed by law, you cause to be made the sum of eight thousand six hundred and six & $\frac{25}{100}$ dollars debt, with interest thereon from

the 5th day of May, 1875, until paid, at the rate of eight per cent. per annum, subject to the following credits, to wit, $354.66, paid July 12th, 1876; $152.49, paid Oct. 29th, 1879; $800, paid November 13th, 1880.

And also the sum of sixty-nine & $\frac{35}{100}$ dollars costs, as well as your own costs and charges, to satisfy a judgment lately rendered against the said Mrs. Fanny B. Lambeth & Ernest Th. Gennert in our district court of the parish of Avoyelles in favor of George W. Sentell & *als.*

And how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable A. Barbin & W. F. Blackman, judges.

Given under my hand and seal of office, in the town of Marksville, this 9th day of January, A. D. 1884.

[SEAL.] L. V. GREMILLION, *Clerk.*

121 1. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situate in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clear and public road leading from Holmesville to Marksville, on the south by lands of Brice and Frith, on the east by road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

2. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty-two acres.

L. V. GREMILLION, *Clerk.*

122 *Sheriff's Return.*

Rec'd this writ on the 9th day of Jan'y, 1884, and on the 10th day of the same month and year I duly seized the property described on the accompanying notice of seizure and said defendants were notified of said seizure, as therein stated. On the 26th of the above-stated month and year I caused the property to be advertised in the Marks-

ville Review, a newspaper published weekly in the town of Marksville, to be sold at the court-house door, in the town of Marksville, on the first Saturday, the first day of March, 1884; said property being advertised for cash with the benefit of appraisement, on the 12th day of Feb'y, 1884, notified Mrs. F. B. Randolph to come forward before the sale and appoint an appraiser to estimate said property. The defendant having waived a notice of appraisement, I therefore did not serve a notice on him. The first day of March having arrived, I repaired to my office and there caused said property to be appraised by A. M. Gremillion and Charles F. Heresman, the first being chosen by the plaintiff and the second named by the defendant. They having agreed on the appraisement and the hour of 11 a. m. having arrived, I repaired to the court-house door and there read to the bystanders in a loud and audible voice a description of the property to be sold, as also the terms and conditions of the sale. I also read the certificate of mortgage bearing date March 1st, 1884. After these formalities having been all complied with I then offered said property for sale, when George W. Sentell, being the last and highest bidder, became the purchaser of the entire property for the price and sum of twelve thousand and two dollars, of which the following disposition has been made:

123 Clerk's costs, $10.10; witnesses' costs on writ, $20.40; guardian's costs, $30.00; sheriff's costs, $91.90; printer's costs, $21.00; parish taxes, $178.50; interest on taxes for 1881, 1882, and 1883, $104.53; taxes of 1883, $187.74, the Rhea mortgage amounting in full, with principal and interests to date of sale, — $6,037.12, which amount was retained in the hands of purchaser and still rests on the property, the remainder being $5,320.81 which amount I have credited on this writ. There being nothing else, I therefore return this writ credited as above stated.

Sheriff's office, March 1st, 1884.

CLIFTON CANNON, *D'y Sh'ff.*

STATE OF LOUISIANA,
*Parish of Avoyelles.*

I do hereby certify the above and foregoing to be a true and correct copy of the original on file in my office.

Given under my hand and seal of office, at Marksville, Avoyelles, La., this 18th day of March, A. D. 1884.

[SEAL.] (Signed) G. H. COUVILLON, *D'y Clerk.*

*Evidence Offered by Mrs. Fanny B. Randolph.*

**Evidence of Mrs. Fanny B. Randolph taken before J. W. Gurley, special master, at various times.**

124 G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

Testimony taken on behalf of Mrs. Fanny B. Randolph, defendant, before J. W. Gurley, special master, this 3d day of May, 1887.

Present: E. T. Merrick, Esqr., for Mrs. Fanny B. Randolph, a defendant; also representing Mr. Farrar and McLean, liquidator; Henry Renshaw, Esqr., solicitor for ——; E. M. Hudson, Esqr., solicitor for complainant, Sentell.

Mrs. FANNY B. RANDOLPH, a witness produced and examined for the defendants, says:

By Judge MERRICK:

Q. Have you any interest in this suit, either as plaintiff or as defendant?

A. I am one of the makers of the note.

Q. Have you any interest in this suit of Sentell against yourself and others?

A. Yes, sir; I am a party to this suit, a defendant.

Q. You have been married?

A. Yes, sir.

Q. Will you state what time your husband died and give his name?

A. Christopher M. Randolph. He died September 22, 1868.

Q. Where did you and he reside at the time of his death?

A. On the Lainster plantation, in the parish of Avoyelles.

Q. How many years were you married?

A. I was married on the 11th April, 1865.

125 Q. Were there children of the marriage when your husband died?

A. Yes, sir; my eldest boy was not quite two years old.

Q. Who had the management of the plantation?

A. My husband.

Q. Who was the owner of the plantation?

A. Me and my sister owned it from our father's estate. It was undivided at the time of my husband's death.

Q. What other lands were there belonging to your sister and yourself at that time?

A. The Lainster plantation, the Lucky Hit plantation, the Dora plantation, and then there was the Bayou Jack; and we had an undivided share in the Tchoupique lands.

Q. Who managed your business during the marriage?

A. My husband had the entire charge of it.

Q. What knowledge did you have of the business—of what he did in the management of it?

A. I had very little knowledge of it. I left everything to him. My husband attended to everything.

Q. What knowledge had you of business?

A. I was very inexperienced. I had no knowledge.

Q. What property was brought, if you remember, by your husband during the time of this marriage?

Mr. Renshaw objects, 1st, that it is irrelevant; 2d, that we are not concerned about any purchase made by the husband, and if the question refers to any property movable in character it is leading.

A. Do you refer to lands, or what?

126 Q. What personal property, if any, was bought by your husband during the time of this marriage?

Same objection.

A. When we got to the plantation immediately after the war there was not anything left on any of the places. We had everything to buy to make the crops.

Q. What did he buy?

A. I suppose mules. We did not work the plantations until 1868. They were worked by others on the places.

Q. After your husband's death were any steps taken to inventory the property belonging to the community left by your husband at his death?

A. I recollect there was an inventory taken. There were some papers that I signed, but I do not know what papers they were.

Judge Merrick offers in evidence a copy of the inventory referred to, marked Mrs. R. 1.

Mr. Renshaw objects, 1st, as irrelevant to this controversy; 2d, as *res inter alias acta*; 3d, as not competent to prove the property to *be* belong to the estate, as in said inventory set forth, so far as Martha and William J. Groves are concerned; 4th, that it does not appear to have been homologated or approved by any court.

Q. In this community inventory I see 26 mules on the Lainster plantation. I want to ask you where they came from what mules they were, and who bought them?

A. These mules I suppose were mules bought. I do not know that I ever saw that paper (inventory) before. These mules I suppose are those that Mr. Randolph bought from Mr. Ray's estate.

127 Mr. Renshaw objects to the answer on the ground that it — merely an opinion and not direct knowledge.

WITNESS: During the whole year that Mr. Randolph worked the place before his death, I do not know what mules he bought that were on the place, but in 1867 he bought mules from Mr. Ray's estate, after Mr. Ray died. I know very little about the different things there (in the inventory).

Q. Was this property there inventoried as belonging to the community?

A. I don't know what was done. I signed the papers that were given to me to sign by others.

Q. What else was got from Mr. Ray's estate besides these mules?

A. You are asking me what Mr. Randolph bought from Mr. Ray's estate.

Mr. Renshaw objects on the ground that the witness has not yet shown that these mules were gotton from Mr. Ray's estate.

Q. Were these mules bought from Mr. Ray's estate sold by Mr. Randolph?

A. Not that I ever heard of, and I feel quite sure they were not stolen, but they were used to work on the plantation.

Judge Merrick offers in evidence the procès verbal of the family meeting with reference to that property inventoried as community, marked Mrs. R. 2.

Mr. Renshaw objects as above—irrelevant and *res inter alias acta*. It does not appear to have been homologated or approved by any court.

Mr. Merrick offers in evidence the homologation of the procès verbal of the family meeting, marked Mrs. R. 3.

128 Mr. Renshaw objects, as *res inter alias acta* and not purportive of title to property as against Martha and William J. Groves.

Mr. Merrick offers in evidence the act of partition of property between Mrs. Randolph and Mrs. Stark, marked Mrs. R. 4.

Also offers a certified copy of the account of Mrs. Randolph, as administratrix of her husband's estate, to show that she has settled up the estate of her husband and the community property and that she owed nothing to the Ray heirs on account of her administration of that estate; marked Mrs. R. 5.

Mr. Renshaw objects, as being *res inter alias acta*; that it is not proven; that it does not purport to be anything but an unsworn statement, and it cannot be introduced as against the Groves or to establish anything as to title to property or as to the character, nature, or consideration or any of the debts or items which appear therein.

Further, that there is no authentic evidence of it being a correct copy and that it does not appear Lafarge, clerk, is the custodian of the original, of which this purports to be a copy; on the further ground that it never appears to have been published or proven by judicial authority and there is no affidavit as to its correctness.

Q. Look at this paper carefully and state what you know about the payment of the debts mentioned in that account, if any payments were made by you or by any agent for you, and what you know about it. (Document, Exhibit Mrs. R. 5.)

A. That paper (Mrs. R. 5) shows that payments passed through the hands of Mr. Stark.

129 . Q. Did you not make some of the payments yourself?
A. No, sir. You mean if I had the money and paid it over to the people with my own hand?
Q. Yes.
A. No, sir; I did not.
Q. Did anybody else besides Mr. Stark make the payments for you?
A. No, sir.
Q. The business was done by Mr. Stark for you?
A. Yes, sir.

Judge Merrick offers in evidence the release of the mortgages by order of court, following the account Mrs. R. 5. This release, now offered, is marked Mrs. R. 6.

Q. Is that all that you desire to state about the account Mrs. R. 5?
A. That the money was paid out on the bills rendered to Mr. Stark. The money was paid out by Mr. Stark to the different parties entitled to receive it. It has been twenty years ago, and I do not remember about these things. Mr. Stark paid them.

Mr. Renshaw objects to the document Mrs. R. 6 as *res inter alias acta;* that it is only a part of the record, and that the entire record must be produced, particularly the petition referred to in document Mrs. R. 6, and he calls for the production of the entire record and every voucher referred to in said alleged account, Mrs. R. 5. Further, that he objects to any testimony as to the payment of any of these debts set forth in the alleged account Mrs. R. 5 on the ground that written vouchers must necessarily have been produced, and therefore they are the best evidence of the payment of any item set forth in said account, Mrs. R. 5.

130 Q. Look at that paper and state if that is your signature or either of them, which is a mortgage note bearing date January 1, 1868, marked Defts, 4, March 9, 1887.
A. Yes, sir; it is.
Q. Were you or not a married woman at the time you signed that?
A. Yes, sir; I was.
Q. Had there been any separation of property between you and your husband at that time?
A. No, sir.
Q. Who had the administration of all your affairs at that time?
A. Mr. Randolph had the whole management and control of the undivided estate—my father's estate.
Q. You say your father's estate; who were the heirs to that estate?
A. Mrs. Stark and myself.
Q. Were they the lands that you have already described in your testimony?
A. It was composed of those lands and other property.

Q. Please state now what payments, if any, you have made on this mortgage note and to whom.

A. Have you a memorandum of these payments?

Q. Yes.

A. Mr. Stark made all the payments on this note except two that I made myself.

Mr. Hudson, for complainant, offers in evidence the eight exhibits annexed to the bill of complaint, marked 1, 2, 3, 4, 5,
131 6, 7, 8, they being fully described in the bill and filed therewith by the clerk of the court, of date May 29, 1886.

Adjourned to Thursday at 3 p. m., May 5, 1887.

Attest: (Signed) J. W. GURLEY,
*Examiner, &c.*

*Testimony of Mrs. Randolph, Taken on Her Own Behalf, May 6, 1887.*

GEORGE W. SENTELL
*vs.*
MARTHA GROVES. } No. 11376.

Mrs. RANDOLPH, one of the defendants, May 6, 1887.

Taken before J. W. Gurley, master in chancery.

Direct examination:

Mrs. Randolph, having been previously sworn in the cause, is again called, and says:

Mrs. RANDOLPH:

Q. Mrs. Randolph, we hand you this paper, marked Mrs. R. No. 7. Please state what you know in regard to that paper.

A. I do not know anything about it, only I suppose it is a paper concerning those mules which were bought by Mr. Randolph from the Rhea estate.

Mr. Renshaw, counsel for Martha Groves, objects as follows: Answer is objected to, as the witness has no personal knowledge of the paper about which inquiry is made of her.

132 Q. Did you have any knowledge of the sale of the mules or horses?

A. Yes; I knew of the sale.

Q. Do you know in what way the inventory of the estate was taken after the death of your husband?

A. I suppose that all of the plantation was inventoried. The inventory was taken in the proper way. That is all I know about it.

Mr. Renshaw objects to above answer on same ground heretofore stated.

Q. Was anything withheld from the officers when they went to make the inventory, so far as you know or believe?

A. Not that I know of; not that I believe. Everything was properly taken.

Q. What knowledge had you at the time you signed these papers and subsequent papers of your rights as a married woman?

A. None whatever.

Q. Your rights as a widow?

A. None whatever. I did not know that I had any peculiar rights.

Q. When you signed these papers respecting the Rhea note and all papers subsequent thereto, what information was given you as to your rights?

A. None that I can recall or remember or know of.

Q. You say that now in reference to every paper?

A. Yes; every paper I have signed.

Q. Respecting that note?

A. Yes, sir.

Q. Did anybody ever explain to you what your rights were about the signing of any of those papers?

133 A. No, sir.

Q. Or at the time you signed that note?

A. No, sir; not that I know of; I just signed the note, just so.

Q. Mrs. Randolph, please state what payments you have made on the note or caused to be made on the mortgaged note.

A. 1875, 21st of April, of my money Mr. Olivier received $400; 1876, March 31st, $1,500; 1877, May 5th, $780; 1878, April 9th, $428.29; 1879, April 2nd, $619.50; 1879, Oct. 16th, I paid three drafts to Mr. Olivier, agent, $501.91; 1881, Nov. 25th, through G. W. Sentell & Co., $389.84.

Q. Is that all?

A. The other payments I do not know anything about.

Mr. Renshaw objects to the question and answer thereto, in so far as it may be sought thereby to set up credits which do not appear upon the note in suit, for the reason that there is no such issue presented by the pleading of contestants to correctness of the credits on the note and claiming additional credits.

Q. Mrs. Randolph, you said something about these payments in reference to the partition?

A. These payments have been made since the partition of the property. January, 1873, the property was partitioned.

Q. What payments were made prior to that, if you know?

A. I have not the number of those payments down here. Mr. Stark made those payments out of the estate funds.

Q. What was the estate out of which Mr. Stark made those payments?

A. My father's estate; the estate of Wm. M. Lambeth.

Q. Mrs. Randolph, please look at this document marked defendants' document No. 6, being the sheriff's deed, and compared

134 the description of the land therein mentioned with the partition of the property, being the document of Mrs. Ran-

dolph marked Mrs. R. No. 4, and say what portion of the property mentioned in the partition is that described in the sheriff's deed.

A. The lands mentioned in this document are the same lands that belonged to me and was property partitioned between Mrs. Stark and myself.

Q. Were the Choupeque lands divided?

A. No; they were not divided. We retained an undivided interest in the Choupeque lands.

Q. What did you say about having paid the amounts due in the final account which you rendered of your husband's estate?

A. I said there was an account which had been paid by Mr. Stark.

Q. Did any of those papers come to you afterwards?

Objection made for the reason that, being an account in court, there would have to be vouchers to show these papers, and therefore I object to any evidence to show payment and insist upon the production of vouchers.

Cross-examination by Mr. RENSHAW:

Q. Mrs. Randolph, in reference to payments made on this note which is in suit you refer to a memorandum. By whom was that memorandum made?

A. What memorandum are you speaking of?

Q. When you testified in relation to certain payments made on the note which is in suit you consulted a memorandum which you held. Who made that memorandum?

A. I made that momorandum myself. It is my own money paid out.

135 Q. Did you make the payments yourself on the note or did you hand the money to some one else to make payment for you?

A. I gave all to Mr. Stark, except the last two payments I stated I had made myself—the payments to Mr. Olivier and the payment to Mr. Trist.

Q. Those were the two last payments made on the note?

A. The two last payments that I mentioned are the amounts I paid myself. I do not know what the last payment on the note is; some doubt in my mind about the last payment on the note.

Q. You state an account was filed in the succession of your husband before the court in the parish of Avoyelles. Who prepared that account?

A. I had nothing to do with the preparing of the account, except the accounts were rendered and paid by Mr. Stark.

Q. You say the accounts were rendered and paid by Mr. Stark?

A. It was 20 years ago. I do not really remember whether I gave draft for any of those payments. The payments were made by Mr. Stark.

Q. You have no personal knowledge of that, have you?

A. No, sir; not that I recall at this late day. It was 20 years ago.

Q. Mr. Stark is your brother-in-law?
A. Yes, sir.
Q. The husband of Miss Dora Lambeth, who signed this note?
A. Yes, sir.
Q. When did you take possession of the Leinster plantation?
A. When did I take possession?
Q. Yes.
136 A. When the property was divided.
Q. Were you cultivating the Leinster plantation during the war?
A. I did not take posession until after the partition of property in '73, when it fell to me, to my share.
Q. Who was on the Leinster plantation in '68?
A. We all lived there; my husband, my sister, and myself; she was not married; in December, '68, she was married.
Q. How long had you been residing there prior to '68?
A. We were on the plantation the first of January, '68; we had been living on another plantation.
Q. Was the Leinster plantation stocked at the time you went upon it in '68?
A. Yes.
Q. It had on it all that was necessary for its cultivation?
A. Mr. Rhea had worked that plantation for two years before; Mr. Rhea died in October, I think, in the fall of '67. Mr. Randolph had an agreement to go into partnership with Mr. Rhea in '68; then my husband worked the plantation in '68, and died in September of that year.
Q. You were residing on the plantation at the time of your husband's death?
A. Yes, sir.
Q. Did you remain there for any length of time afterward?
A. No, sir.
Q. When did you leave there?
A. The second day of December, 1868.
Q. You were not present at the purchase of any mules that may have been made by Mr. Randolph, were you?
137 A. No, sir.
Q. Then what you may know of such purchase is derived from others?
A. Derived from him, that he had purchased the effects, and I knew at the time Mr. Randolph had purchased the effects of Mr. Rhea's estate.
Q. How do you know that?
A. I know.
Q. How?
A. He told me so.
Q. Who managed the affairs of the succession of your husband?
A. Mr. Stark.
Q. Did he explain to you at that time the difference between community and separate property?
A. No, sir.

Q. Did he explain to you what was meant by those terms?
A. No, sir; I did not know anything about it.
Q. Did you know what they meant on the account or in the inventory?
A. No, sir; I did not know I ever heard the word at that time.
Q. When were you married, Mrs. Randolph—the date?
A. April, 1865.
Q. Did your husband manage all your business during the entire period of your marriage?
A. We went down to the plantation after the war closed; at the time of his death he managed all my affairs.
Q. Was your husband a man of means?
A. No, sir; he was a soldier in the army.
Q. Lose everything during the war?
138 A. He gave his services to the war. My husband was by profession a civil engineer. At the beginning of the war he went into the army and was there all through the war. He was independent in his profession.
Q. He was independent in his profession but not in worldly goods?
A. No, sir.
Q. Did he manage your business satisfactorily?
A. Entirely so. I had perfect confidence in my husband.
Q. You had confidence in his statements?
A. Perfect.
Q. What he advised you to do?
A. Perfect confidence.
Q. No idea he would mislead you?
A. Not the slightest.

Direct examination resumed:

Q. It was this confidence, then, you had in your husband that induced you to sign those papers without any question on your part?
A. Yes, sir.
Q. You signed the papers because he presented them to you?
A. Because he advised me to do it. I knew what he did was all right and I was perfectly satisfied.

Examination of Mrs. RANDOLPH resumed:

Q. Mrs. Randolph, were you ever informed by any one that your obligations was less than one-half of the mortgage note up
139 to the time of Mr. Hunter's communicating it to you?
A. The first I heard of it at all was from Mr. Hunter, when he asked me something about the first mortgage on the place and when it was made. That is the first I heard of it.
Q. Have you in your possession the original of that paper marked defendants' document No. 15?
A. No.

Attest: (Signed) J. W. GURLEY,
*Examiner, &c.*

*Deposition of J. G. Correjolles on Behalf of Mrs. Randolph, Taken 5th May,* 1887.

GEORGE W. SENTELL & *als*
*vs.*
MARTHA GROVES *et al.* } No. 11376.

Testimony taken in the office of Messrs. Merrick & Merrick, before J. W. Gurley, Esq., master, May 5th, 1887.

JOSEPH O. CORREJOLLES, being sworn and examined on behalf of Mrs. Randolph, deposes and says:

By Judge MERRICK:

Q. I am told that you have some knowledge of that paper. I wish you would state when you made it and where. First, if that is in your handwriting.

140 Witness is shown document marked Mrs. Randolph No. 7.

A. I made that paper. I don't see no date there.

Q. You will have to fix it as well as you can from memory.

A. This was only a memorandum I made for myself. I must have left the other paper with Mr. Randolph. There was a small book, and very probably I gave the other paper to Mr. Randolph.

By Mr. RENSHAW:

Q. From what did you make the memorandum?

A. Sometimes I made two memorandums—one for myself.

By Judge MERRICK:

Q. What was this memorandum for?

A. Memorandum that I made. I don't say it is the memorandum, but I have made one in a small book. I don't know what became of it. Mrs. Rhea has got the other. She is in Patriot, Indiana, I think.

Q. Was this made before or after Mr. Rhea's death?

A. After. He took sick and died out there. Mr. Van Horn took charge of Mr. Rhea's succession.

Q. Was this made about the time of the transfer of the stock to the party named in that instrument?

A. Mr. Randolph took this in part payment, I think, if I am not mistaken. It's so long ago I have forgotten about that. I know that he took the horses and mules in part payment for rent, if I am not mistaken. Mr. Van Horn could tell you.

Q. That is in your handwriting?

A. I made that memorandum myself.

Q. That was made about that time?

141 A. About that time—a little before we sold out. I kept account of the stock we had on the plantation bought by Captain Randolph. I made that memorandum for Mr. Randolph.

Q. It was found among Mr. Randolph's papers?

A. I must have given it to him, you know. We transferred some property we had there. I think Mr. Randolph bought some seed cane and some corn we had on the plantation. I think I made a memorandum of the number of bushels of corn we had on the plantation. I think this is a correct account of the stock we had on the plantation when I left. As soon as Mr. Randolph took possession of the plantation I left there and came to town.

Q. This was made about that time?

A. Yes, sir; I think it was made about that time, but I cannot tell exactly the date. I think I made a memorandum of the amount of corn and things we had there—plows. Mr. Randolph, I think, took all that.

Q. That must have been about the time this note was given, I reckon?

A. I can't tell you the date. I had a memorandum book, but I lost it.

Q. Well, at that time everything was given up to Mr. Randolph?

A. I think everything was transferred to Mr. Randolph.

Q. Was that before 1870?

A. I think, if I am not mistaken, it was in 1868—'67 or '68 somewheres—because in 1870 I was working here in town.

Q. I suppose no other one was given—no other instrument like this was given—that you remember?

A. Not that I remember. I know we gave the mules,
142 horses, plows, corn, and everything we had on the place to Captain Randolph. I made a memorandum in a small book that I kept for Mr. Van Horn when I came here, but must have lost it.

Cross-examination by Mr. RENSHAW:

Q. Mr. Correjolles, were you in the parish of Avoyelles?

A. I was employed by Mr. Rhea. I was on the Leinster place, in the parish of Avoyelles.

Q. And you have been interrogated as to what purports to be a memorandum as to some stock?

A. Yes, sir.

Q. You state that is in your handwriting?

A. Yes, sir; that's in my handwriting.

Q. By whose direction did you make it out?

A. Mr. Vanhorn advised me to do so when we transferred all this to——

Q. Who was Mr. Vanhorn?

A. He was in charge of the succession of Mr. Rhea; he was a commission merchant here in town.

Q. Was he a creditor of Mr. Rhea?

A. Mr. Rhea had some money there to his credit, if I am not mistaken; Mr. Rhea always had money to his credit there.

Q. What was Mr. Vanhorn's position towards the succession of Mr. Rhea?

A. I don't know if Mr. Rhea owed him any money at the time; I can't say.

Q. Was Mr. Rhea dead at the time Mr. Vanhorn was giving his attention to these matters?

143 A Yes, sir; I think Mr. Rhea died two or three months—I don't know how long before; but he died before we transferred the property to Mr. Randolph.

Q. You don't know in what capacity Mr. Vanhorn was acting?

A. He was appointed by the court to settle the succession.

Q. Please state what you know personally; it's been some time since then.

A. It's been about 19 years ago. I know he was in charge of the succession, for he would stay there and attend to the business.

Q. Did you ever see his letters of executorship or administration?

A. No, sir; I don't recollect. I know he wrote to me; I have some of the letters; I have them home.

Q. Then you don't know that personally?

A. No, sir.

Q. You don't know, then, in what capacity he was acting?

A. No, sir; I know he was appointed by the court to settle the succession.

Q. Did you ever see his letters?

A. No, sir.

Q. Then that is a mere inference.

A. I know he was appointed by the court.

Q. Just give us the sources of your information.

A. Well, I know that he wrote to me to take charge of the business there and to act in his place.

Q. You got your information from him?

A. Yes, sir; from Mr. Vanhorn.

144 Q. Were all the dealings as to this stock held between Mrs. Randolph and Mr. Vanhorn?

A. Mr. Vanhorn and Mr. Randolph settled that transaction, but Mr. Vanhorn when we transferred there was not on the plantation. I was the party who transferred all that to Mr. Randolph. Mr. Vanhorn was in town here—in New Orleans.

Q. Did you transfer it to Mr. Randolph by direction of Mr. Vanhorn?

A. Yes, sir. Everything was done through Mr. Vanhorn's orders.

Q. And to carry out an agreement personally made with Mr. Vanhorn?

A. I suppose so.

Q. Of course, you know nothing about that. Mr. Vanhorn was in town and merely wrote you?

A. I had his power of attorney to sign and all.

Q. Where was this statement made out?

A. Right on the Leinster place.

Q. Was Mr. Vanhorn present?

A. No, sir; this was another. I might have seen the papers given to Mr. Vanhorn, but so long ago I don't recollect.

Counsel for Mrs. Randolph offers in evidence document marked Mrs. Randolph No. 7.

Counsel for Mr. Groves objects to the admission of the above document for the purpose of proving what is set forth in the heading thereof for the reason that the witness who made out the statement testified that he knew nothing of the transaction and was merely carrying out the instructions of Mr. Vanhorn, who at the time this memorandum was made was in New Orleans, this
145 memorandum having been made on the plantation in Avoyelles; and, further, for the reason that a heading such as appears on that statement, made by a party who, according to his own testimony, was ignorant of the transaction as to the transfer of stock, is not evidence against anybody, and particularly to contradict the act of mortgage in this case executed by Miss Lambert for Mrs. Randolph.

Attest: (Signed) J. W. GURLEY, *Examiner.*

*Testimony of T. O. Stark, Esq., at Various Times, Taken Before J. W. Gurley, Master, &c., May 6th,* 1887.

GEORGE W. SENTELL
*vs.* No. 11376.
MARTHA GROVES *et al.*

THEODORE O. STARK, called as a witness, being duly sworn on behalf of the defendant Mrs. Randolph, says:

Counsel for the Groves, defendant- herein, objects to any testimony given by Mr. Stark for the reason that he is necessarily in this matter a witness for or against his wife, Dora Lambeth, and, such being the effect of his testimony, he is an independent witness. The husband can not testify for or against his wife, nor testify
146 where the effect of his testimony will be advantageous or prejudicial to his wife.

Q. Mr. Stark, please state from the beginning what you may know in reference to this note and payments that Mrs. Randolph has made on it, but first speak in reference to the inventory taken after the death of Mrs. Randolph, and what you may know in regard to the inventory and settlement of that estate and payments of those debts.

A. Well, I was at the Lambeth plantation before and at the time of the death of Mr. Randolph, and I suggested to Mr. Irion to wind up his estate according to law. There was an inventory taken I know, but I was not present at the time.

Q. It was a full and fair inventory of the estate?

A. I do not understand that there was any property omitted at all in any way. I was not present at the inventory. I had no knowledge at all nor belief — there was anything omitted at the inventory. Mr. Randolph wished me to take care of his family and his property. I endeavored to do so—realized the assets that accrued after-

ward and paid all the debts. I paid a great many taxes afterward that were on the community property that were not down on the account. I paid also Judge Cullom $525 that is not on the account.

Q. What was that for?

A. For legal services rendered to Mrs. Randolph in the interest of the property; one-half of that was charg-able on the community. I have the tax receipts.

Q. Get the account first.

A. The payments down here of these claims went through my hands.

147 Q. Look on the back and describe the paper you hold in your hand and about which you are speaking.

A. Account marked Mrs. R. No. 5.

Objection made to any portion of evidence of payment of items on what purports to be the account unless the vouchers for such payments are produced.

A. I will state the vouchers for Dr. Winn, and down to laborers' wages and including laborers' wages, $968.47, were filed with the clerk. I believe with a little search the originals can be found. I can produce the duplicates if necessary. Mr. Allen's is one of the largest ones, and I can get Mr. Allen to say he was paid. A voucher for the labor on the plantation was on a piece of paper made by Mr. Bennett. He was overseeing the place, and he said that they were paid, and a witness to the payment of each of them. Now, there had been paid the following taxes, which are not down on the inventory, accruing to the charge of the community: Dec. 31st, '68, J. J. Ducota, parish taxes '67, $561.00; receipt of same for State taxes for '67, $394.19; receipt for convention taxes of '68, $750; receipt of E. F. Huesman, tax collector, $515.00, for the judgment taxes of 1868; receipt of judgment taxes, $304.78, and another receipt for parish taxes of '66, $118.69.

Q. What I wish to call your attention particularly to is to the amounts that were carried into the account which seemed to have absorbed the estate.

A. You ask me if these charges did not absorb the estate?

Q. Yes.

A. The charges set out in the account absorbed the estate.

148 Q. Mr. Stark, please look at this document marked Mrs. R. No. 7 and state what knowledge you have of that paper, how long you have known it, where you found it—all you know in reference to it.

A. This paper I found in looking amongst the papers of the estate which had been laid away. I was making some investigation three or four years ago—three years ago—and found this paper, and the mules described in here are the names I have heard the negroes say.

Objected to.

A. I will state I was intimate with Capt. Randolph and family in 1868. I knew the plantation had been rented in '65, '66, and '67,

and that there was no property belonging to the heirs in those years—that is, no mules. I can say that I did hear that some of these mules were bought by Mr. Rhea from Mr. Firth, and were designated——

Objected to as being hearsay.

A. I did hear it was said they bought some from Mr. Blair; they designated 13 of them as the Blair lot.

Same objection.

Q. You say distinctly you found this document marked Mrs. R. No. 7 among the papers that belonged to the estate of Mr. Randolph?

A. Yes, sir.

Q. Have you any idea that it had been put there recently?

A. No, sir; not at all; it was in the box that had been devoted to his papers. I may have seen it repeatedly and yet have passed over it.

149 Q. Mr. Stark, what became of the property mentioned in this document, Mrs. R. No. 7, at the time and after the death of Mr. Randolph, so far as his estate was concerned?

A. I understand it was declared to the interest——

Objected to on the ground as hearsay.

Q. I wish to know what became of it in reference to the inventory of Mr. Randolph's estate of the community.

A. Well, I was not present at the inventory: I suppose it was included in it.

Objected to for same reason.

A. As I stated before, there was no other movable property on the place. I was at the plantation repeatedly before and after the inventory. I had always understood that all the mules on the plantation had been those of Mr. Rhea's estate.

Objected to for the same reason.

A. I know there was no more mules on the place in '69, at the time it was leased, than those that were inventoried.

Q. Were you there in the fall of '68?

A. Yes; as I said before, I was there during the sickness and death of Capt. Randolph and repeatedly since.

Q. Now, what do you say in regard to '68, that there was no other property on the place except that mentioned in the inventory?

A. Having been the agent of Mrs. Randolph and Mrs. Stark and leased out the Leinster plantation in '69, I was cognizant of the number of working animals on the place, and therefore of their derivation, and this list corresponds with the list that was there then.

150 Q. Now state how much you know and what you know in reference to how the estate was settled up. You have already

stated, I think, the property in the decree of the court was adjudicated to Mrs. Randolph?

A. Yes.

Q. What knowledge had Mrs. Randolph at this time about the management of that business, her capacity to understand?

A. She had not any at all; she was very much overwhelmed by the death of her husband; she did not give any attention to the business at all.

Q. Had she ever been qualified to manage estates or to have an experience of business in any way?

A. No, sir; she has a barrier in her deafness and bringing up which was against the jostling of managing business nowadays.

Q. Had no experience in business of any kind?

A. No, sir; not a bit.

Q. What was ever told her, so far as you know, in reference to any of the papers that she signed since the making of that note and in reference to the payments that have been made upon this mortgaged note, whether anything was communicated to her at the time she signed power of attorney and other papers in reference to the extent of her obligations or rights?

A. Communicated by whom?

Q. Either by any person on the part of the Rheas or any other person connected with the claim or in any other manner.

Objection made to the foregoing question as to any communication made to Mrs. Randolph except such communications as
151 may have been made by Mr. Stark.

A. No; I did not. On the contrary, the first knowledge of the kind of Mrs. Randolph's incapacity to bind herself was through Mr. Hunter, who was at a visit in Evergreen two or three years ago; that is as far as I know.

Q. Please speak if you know of any communication being made to her in reference to the effect of that obligation which she signed as the mortgage note.

Objection made to witness testifying except such communication as he himself made to her.

A. I do not know of any communication having been made to her at all within the last two or three years.

Q. Had you means of knowing? Did you act for her as her agent, and had you means of knowing what was done in relation to those payments in communicating facts to her?

A. I represented Mrs. Randolph in the intercourse had with the agent. I represented her generally in her outside business.

Q. What were your opportunities of knowing whether any communication was ever made to her of the fact that she was not bound originally in that note?

A. Well, Mrs. Randolph was an inmate of my house until—well, continuously, with occasional interruptions of a month or two at a time in 1869, until 1876, and naturally I should have heard anything that would have been said on so serious a subject.

Q. Who furnished the sketches or models of the papers that were to be signed by Mrs. Randolph during the time that these payments were being made?

(Hands witness paper.)

152 A. I remember that paper; it is a paper that was handed to me by Mr. Olivier, as agent of Mrs. Rhea. Under these circumstances I——

Objection made to any testimony as to the document now handed the witness by Judge Merrick, which purports to be a sketch of power of attorney, for the reason the power of attorney which has been executed by Miss Dora Lambeth, now Mrs. Stark, and Mrs. Randolph, constituting Mr. Stark their agent, is not evidence, and I object to any conversations or any explanations of anything proceeding and leading up to the said power of attorney, or any evidence tending in any way to contract it, to modify it, or to destroy or limit the authority therein conferred upon Mr. Stark.

A. I have in my hands the form of power of attorney, which was handed to me by Mr. Olivier, agent of Mrs. Rhea, in furtherance of conversation he had had with me, and that Mrs. Rhea was more anxious to have herself recognized as the heir of Mr. Rhea under stipulations in the act of mortgage; that evidence should be furnished to her, being the sole heir of Mr. Rhea. This paper was prepared in the handwriting of Mr. Trist, who was in the office of Mr. Olivier, and was handed by Mr. Olivier to me with request to have it executed. I copied it and secured the signature of Mrs. Stark and Mrs. Randolph in April, 1873. The memorandums in pencil on this paper have no connection with the power of attorney.

Paper just testified to, form — power of attorney, is marked Mrs. R. No. 8 and offered in evidence.

Objected to for the reasons hereinbefore stated.

153 Q. Please compare paper marked Defendant-' Exhibit No. 10 with the document, No. 8.

A. Being shown Exhibit J No. 10, marked March 9th, 1887, recognize it to be identical with the form of power of attorney just now testified in respect of; that in the beginning of it the parties are left blank in the form, but are inserted in the exhibit.

Q. Who is Mr. Olivier you speak of?

A. He is an attorney-at-law here; he had a special power of attorney of Mrs. Rhea in relation to this business.

Q. He was agent here; her agent and attorney-at-law?

A. Yes; in reference to this business.

Q. Who was Mr. Trist you speak of?

A. He was a notary public, and Mr. Olivier and he occupied the same office.

Q. Will you please look at this paper which is called the mortgage note, marked Defendant No. 4, and examine the endorsements on it, and state if you know in whose handwriting these endorse-

ments are made, and state particularly anything you may know in reference to these receipts. First, I desire to know in whose handwriting these endorsements are on it?

A. The first one is in the handwriting of Mr. Trist; the second, third, and the fourth are in the handwriting of Mr. Olivier.

Q. You speak now of the top of the document on the back?

A. Yes, sir; the endorsement is in the handwriting of Mr. Trist, notary public; the second, third, fourth, fifth, and top are in
154 the handwriting of Mr. V. Olivier, agent of Mr. Rhea. Next one below is in the handwriting of Mr. Trist, but is signed also by Mr. Olivier, as agent for Mrs. Rhea, and the next one is in the handwriting of Mr. Olivier, the next one in the handwriting of Mr. Trist on the other side, the next one in the handwriting of Mr. Trist, and the next one in the handwriting of Mr. Trist; Mr. Trist signed those three last as the agent of Mrs. Rhea.

Q. Now, Mr. Stark, please state what payments were made by Mrs. Randolph from the time that that mortgaged note was given up to the present time—what payments were made by her on this note to the Rhea heirs, that went into the hands of the Rhea heirs, whether paid to you and by you to them or in what way, whatever way it may have been done.

Objection made to any testimony by the witness tending to show payments other than those which appear upon the mortgaged note in suit, for the reason that no such question is raised nor such suit presented by pleadings herein.

A. In the last part of March or beginning of April, 1870, I remitted to Mrs. Rhea check for $500—five hundred—through the Louisiana National bank, No. 34038, on Winsle, Lamier & Co., New York.

I further object to any testimony showing payments as above receipted because contradictory to the endorsements on said note dated April 28th, 1873; also as contradictory to and contradicting endorsement dated May 5th, 1877; also contradicting endorsement July 2nd, 1879; also the endorsement April 28th, 1880; also endorsement without date, but being the endorsement whereby the principal of the note is stated at $4,873 and is postponed to
155 March 5th, 1882; also as contradicting the act of April 28th, 1873, before Mr. Trist, notary public, being act of partial payment, with subrogation and extension of time. Paper referred to marked Defendant No. 8 and contradicting the endorsements and documents heretofore offered in evidence in behalf of the Groves.

A. I paid a draft of Mrs. Rhea dated 6th of April, 1870, at 30 days' sight, on Louisiana National bank, due 21st of May, 1870, for $1,000, and then again draft of Mrs. Rhea, at 60 days' sight, due 20th of June, 1870, for $1,500; then there was paid through Nalle & Cammack $2,000 in April, 1873. Those payments were made out of the joint funds of Mrs. Stark and Mrs. Randolph, amounting to $5,000.

Q. One-half, then, to each?

A. Yes; that is the way it was owned.

Witness now produced two of the drafts, one for $1,000 and the other for $1,590, dated 6th of April, 1870, drawn by Mrs. Rhea, marked Mrs. R. No. 9 and Mrs. R. No. 10.

A. In 1875 I paid $400 on account of Mrs. Randolph; in 1876, July, $1,500, for Mrs. Randolph; in 1877 I paid $1,806.20, of which $780 was Mrs. Randolph's; in 1878 I paid $539.20, of which $428.29 was Mrs. Randolph's. That is not credited on the note.

Q. I understand you to say that this had not been credited on the note?

A. No, sir.

Witness, examining the note, finds he is mistaken—the amount of the receipt is on the note.

A. On July 1st Mrs. Stark paid, through Mr. Stentell, on the note of Mrs. F. B. Randolph, C. M. Randolph, and Dora Lambeth,
156 $1,239, and about the same time Mrs. Randolph put in funds $646 of the amount to the credit of Mrs. Stark, so that in fact she paid it.

Q. Does your knowledge extend to any of those payments which were mentioned by Mrs. Randolph in her testimony of yesterday?

A. I do not recollect what she said. I think she said $400, $1,500, $780, and $428.29. Those correspond with the facts; and the $501.91, all in words and figures on the note, paid by Mrs. Randolph, as so stated. I have some personal knowledge of payment of a thousand dollars in 1880. A thousand dollars is counted for among the credits on the note.

Q. What portion of the property mentioned in this partition was seized and sold by Mr. Sentell, mentioned in this sheriff's deed to Geo. W. Sentell, marked Exhibit No. 1, with bill of interpleader?

Objected to on the ground that sheriff's deeds will show what was sold, seized, or *sold* by sheriff, and that the testimony is not admissible to show what property was sold by sheriff.

A. Being shown the act of partition between Mrs. Stark and Mrs. Randolph, will say that that portion of it which fell to Mrs. Randolph in the act of partition is that described in the deed of the sheriff, marked Exhibit No. 1. There was some portion of land contained in that deed of the sheriff that was not divided and not contained in the act of partition on Choupique and Bayou Jack.

Cross-examination:

Q. Mr. Stark, you state in July, 1879, Mrs. Stark paid $1,239 on account of a mortgage note in suit, and that this payment
157 was made through Sentell & Co., and that Sentell & Co. charged Mrs. Randolph with $646 and Mrs. Stark with that amount. When was this charge made against Mrs. Randolph and credited to Mrs. Stark?

A. I cannot state that. It was only to reimburse Mrs. Stark and what she had paid for Mrs. Randolph.

Q. Do you know by what authority they charged Mrs. Randolph with this six hundred odd dollars and credited Mrs. Stark with it personally?

A. I do not personally.

Q. When did you first make the acquaintance of Mr. Randolph?

A. Captain Randolph?

Q. C. M. Randolph.

A. In 1865.

Q. You were with him at the time of his death?

A. Yes, sir.

Q. Was it at his request you gave attention after his death to the matters of his estate?

A. Yes.

Q. Was that on account of a personal friendship existing between you gentlemen?

A. Well, sir, I suppose partly on personal and partly because I had been for a long time a friend of Mr. Lambeth and Mr. Lambeth's children, Mr. Randolph's wife and sister.

Q. Did you have any interview or any business with representatives of Mrs. Rhea relative to the mortgaged note in this suit?

A. None whatever.

158 Q. You called at the office of Mr. Trist and Mr. Olivier, in this city, did you not?

A. Before its execution?

Q. No, sir.

A. I had interviews with them.

Q. You had frequent occasion to see Mr. Olivier and Mr. Trist, did you not?

A. Yes.

Q. Those gentlemen were representatives of Mrs. Rhea?

A. Yes.

Q. Mr. Stark, when did you marry Miss Dora Lambeth?

A. Second day of December, 1868.

Q. Miss Dora Lambeth was one of the makers of this mortgaged note, was she not?

A. Yes.

Q. Did you prior to your marriage to Miss Lambeth have anything to do with this mortgaged note relative to making any payment on account or any extensions or postponements?

A. No, sir; it was not due until after my marriage—two years.

Q. Did you as the representative of your wife and Mrs. Randolph deal with Mr. Olivier and Mr. Trist relative to this mortgaged note?

A. Certainly I did.

Q. Will you examine the power of attorney marked Defendant No. 10 and state whether you acted under that power of attorney?

A. Yes, sir; I did act under it.

Q. Did you under the powers granted you by that power of attorney make personal payments upon the mortgaged note in suit?

159 A. I did.

Q. And stipulate as to extensions and postponements as therein authorized?

A. I did.

Q. Will you examine document marked Defendant No. 4, being the note in suit, and state whether you recognize your signature thereon?

A. My signature?

Q Yes.

A. Yes, sir; I did.

Q. Wherever your signature appears is it genuine?

A. Yes, sir.

Q. And was your signature as representative of your wife and the representative of Mrs. Randolph—that is what it purports to be—and that is a fact, you were acting as such?

A. Yes, sir.

Q. When did you begin to act in the behalf of Mrs. Randolph and of your wife relative to the mortgaged note in suit?

A. Well, I made some payments to Mrs. Rhea in 1870, but I made them without any inspection of the note; I knew nothing of the note except from reference to the act of mortgage, and that reports the note was not negotiable. In 1873, I remember, was the first time I ever saw that note.

Q. You made, as I understand, payments in behalf of Mrs. Randolph and Mrs. Stark on account of this note directly to Mrs. Rhea in 1870, prior to 1873?

A. Yes.

Q. At that time, I understand you to say, you had not
160 seen the note itself; had you seen the act of mortgage?

A. I had.

Q. You had examined that?

A. I had.

Q And it was after that examination you made these payments?

A. From that examination I made these payments, inasmuch as they were stipulations that the note was not negotiable.

Q. Mr. Stark, where are you residing at present?

A. In the parish of Avoyelles.

Q. How long have you resided there?

A. Since 1872.

Q. Where did you reside prior to that?

A. In the city of New Orleans.

Q. Were you not a notary public in the city of New Orleans?

A. Yes, sir.

Q. How long have you been a notary in the city of New Orleans?

A. I was a notary from '53 to '61 and from '65 or '66 to '72.

Q. Were you not a notary up to the time of your departure from the city?

A. Yes, sir.

Q. And during that time you had an extensive practice, had you not?

A. Yes, sir.

Q. I understood you to say you were not present at the taking of the inventory of the succession of Captain Randolph?

A. No, sir.

Q. Therefore personally you do not know whether all of the stock on the plantation was inventoried or not?

161 A. I know just as well as if I had been there, because had I been there I could not have know- every stock that belonged to the place. I did not reside there and I was not charged with its keeping.

Q. Did Captain Randolph die on the Leinster plantation?

A. Yes.

Q. You were not residing there at the time?

A. No, sir; in the city of New Orleans.

Q. In New Orleans at the time of the death of Captain Randolph?

A. Yes.

Q. And did not remove to the parish of Avoyelles until when?

A. 1872.

Q. Did you ever reside on the Leinster plantation?

A. No, sir.

Q. Did you have charge of the Leinster plantation before you removed up to Avoyelles?

A. Well, yes; I was in charge of it, the representative of my wife and my sister, in the sense that I supervised and inspected and conducted the overseers.

Q. In the sense of giving directions to the overseer and orders to the general management of the place?

A. Yes, sir.

Q. Did you know personally how many mules were there at the time of Captain Randolph's death?

A. I did not.

Q. Did you know personally how many mules were there in '69?

A. Yes; I did know, because in '69 I made a contract of

162 lease and I had to enumerate them.

Q. How many were there?

A. That I cannot tell exactly. I think the number corresponds very nearly to that in the inventory.

Q. You cannot tell otherwise than by reference to the inventory?

A. Yes; I can tell. I can tell by reference to the act or lease and stipulations of the number of mules.

Q. You could not tell to-day; you cannot tell from memory?

A. No, sir; I am pretty certain the number was not less than 20, and pretty certain it did not exceed 30 or reach 30.

Q. Were you present at the purchase of the mules which were on the Leinster plantation at the date of Captain Randolph's death?

A. No, sir.

Direct examination resumed:

Q. Did you reside on the plantation at the time of Mr. Randolph's death or did you visit there shortly afterward or about this time?

A. I have stated heretofore and yesterday I was there before and at the time of his death and afterwards.

Q. How long before were you there?

A. Captain Randolph sent a messenger down to me a week before he died, during his last sickness, and I was there afterward probably half the time until December, '68.

Q. What was Captain Randolph's occupation; what was his profession?

A. He was civil engineer.

Q. What did he do after he came to the plantation; did
163 he continue his profession or manage the place?

A. No; he managed the place. They lived on one of the two places. I think in 1865, after the close of the war, they lived at Leinster, and then they went to Lucky Hit, residing there during 1866 and 1867.

Q. You have been asked the question whether in your dealings with Mr. Olivieo and Mr. Trist you acted under the power of attorney, and whether you were authorized by the power of attorney to do what you did. I wish to ask you this question: Were you authorized to do anything more than this instrument itself gave you power to do?

A. Not one thing.

Q. Was there any power of attorney given to you to authorize you to bind Mrs. Randolph beyond what she was bound at the time this power of attorney was given?

A. No, sir.

Mr. STARK recalled:

Mr. Stark called in reference to Mrs. Randolph's condition in connection with the outside world.

Q. You have said and spoken of her barrier, and I want you to tell whether she can hear without the aid of that ear-tube?

A. Mrs. Randolph, I think, has been deaf since twelve or thirteen years of age. I know she has been deaf ever since I have known her, which has been since 1855 and 1856—ever since then—and it is with great difficulty that she clearly understands what is said
164 to her through the tube, and the inconvenience of speaking through the tube and the difficulty of being understood is a very great barrier to intercourse with other people, and that has been a constant difficulty and a great obstacle to her learning or knowing or being educated as other people of her rank in life would have been.

Q. What do you know about this paper called Defendants' Document No. 15?

A. Not one thing, sir; I never saw it.

Q. Never saw the original of that?

A. No, sir; nor never heard of it.

Witness is now enabled to state that the time when the payment of $1,239.00, given in testimony heretofore, was on July 2nd, 1879,

and the credit by Mrs. Randolph therein referred to was on July 19th, 1879 (referred to on page 20 of my testimony). As in my testimony heretofore given of the payment of $1,806.20, I state that $780.00 was received from Mrs. Randolph, and I now wish to state that $1,000.00 was furnished by Mrs. Stark, through Sentell & Co., and $26.00, also of that $1,806.20.

Q. How much of that was paid by Mrs. Randolph?

A. I said $780.00 of the $1,806.20.

Q. That was all she paid?

A. Yes; that was all she paid.

Q. Mr. Stark, you say that the credit by Mrs. Randolph of $646.00 was on July 19th; do you mean by that that is the date the credit appears according to statement furnished by Sentell & Co.?

165 A. Yes.

Q. And therefore when you say a credit by Mrs. Randolph you mean a credit by Sentell & Co.?

A. A credit by Mrs. Randolph through Sentell & Co.

Q. You mean to say it is so represented on the account of Sentell & Co.?

A. Exactly.

Q. Two payments are by her through them on this note?

A. The payment was of $1,239.00, and I said there that Mrs. Randolph reimbursed $646.00 of that.

Q. The payment was made, then, for the benefit of both ladies?

A. Yes; that is so stated in the testimony.

Q. Mr. Stark, you state that in July, 1879, Mrs. Stark — $1,239.00 on account of the mortgage note in suit. Is that correct?

A. Exactly.

Q. Was this payment made through Sentell & Co. by Mrs. Stark?

A. Yes.

Q. Subsequently—that is, on July 19th, 1879—I understand you to say that Mrs. Randolph was by Sentell & Co. charged with $646.00, and that that amount was by Sentell & Co. credited to Mrs. Stark. Is that correct?

A. Yes; that is correct.

Q. Now, I repeat the question that I asked you before: Do you know by what authority Sentell & Co. charged Mrs. Randolph with this $646.00 and credited Mrs. Stark with it?

A. No; I do not.

Q. For whom was that payment of $1,239.00 made on the note?

166 A. The origin of it was that Sentell & Co. paid $1,239.00, with subrogation, in July 2nd, 1879, and that afterward, when Mrs. Stark put that in fund, they charged it to her account, and then, about the same time they charged it to her account, they charged also Mrs. Randolph and credited Mrs. Stark with $646.00.

Q. What sort of an account was Sentell & Co. keeping then—a joint account?

A. No, sir; a settled account.

Q. Was there any objection made on the part of yourself or your wife to this charging one-half to Mrs. Randolph?

A. It was not one-half.

Q. Well the amount specified?

A. No, sir; no objection.

Q. This credit you speak of, then, is the credit on an account rendered by Sentell & Co. to your wife and yourself?

A. Yes.

*Document Marked "Mrs. R. No. 1," Inventory of the Succession of C. M. Randolph, Deceased.*

THE STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

Seventh District Court.

Seuccession of CHRISTOPHER M. RANDOLPH, Dec'd.

167 Be it known that on this sixth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third, by virtue of a commission from the Hon. G. M. Miller, judge of the seventh district court, holding session in and for the parish of Avoyelles, in the State of Louisiana, the same to me directed, "requiring and empowering me to take, according to law, an inventory of the property, movable as well as immovable (rights and credits), belonging to the succession of C. M. Randolph, deceased, situated within this parish," I, Edouard de Generes, notary public in and for the parish of Avoyelles, in the State of Louisiana, duly commissioned and qualified, went to the last residence of Christopher M. Randolph, situate on Bayou Huffpower, in this parish, and the plantation known as the "Leinster," and, being there on Friday, the sixth day of November, A. D. 1868, at the hour of ten o'clock a. m., I, notary aforenamed, first made due enquiry as to the nature and extent of the succession of Chistopher M. Randolph, d'd, when it was found that the said succession consisted of—

1°. Separate property of Christopher M. Randolph, de'd.

2°. Of property in community between said C. M. Randolph, D., and his surviving spouse, Mrs. Fanny B. Lambeth.

3°. Of the said community property in partnership between C. M. Randolph, D., Mrs. Fanny B. Lambeth, and Miss Dora Lambeth.

168 Whereupon, in the presence of Mrs. Fanny B. Lambeth, widow Christopher M. Randolph, D., acting in her own name:

1°. By reason of the community which has existed between herself and her said husband, dec'd, which community she reserves to herself the right to accept or renounce, as she may think most proper, according to law, hereafter.

2°. By reason of the reprises or credits she has or may have the right to exercise against said community and succession.

3°. As legal tutrix of Peyton and an infant boy not named, minor children, issue of her marriage with said Christopher M. Randolph, d'd.

4°. As partner in the community in partnership between herself, her husband, D., and Miss Dora Lambeth.

Also in the presence of Miss Dora Lambeth, acting in her own name, as partner in the partnership that has existed between herself, C. M. Randolph, D., and Mrs. F. B. Lambeth.

Also in the presence of Maunsel Bennett, herein representing, by power of attorney duly submitted and hereto annexed, William M. Randolph, tutor of William Kein Randolph, minor child of C. M. Randolph, d., issue of his marriage with D. Emily Kein, also deceased.

Col. Theo. O. Stark, under-tutor of Peyton, minor child of C. M. Randolph, issue of his marriage with Mrs. Fanny B. Lambeth, having failed to attend, altho' duly notified.

I, notary aforenamed, prepared to take a faithful and descriptive and estimative inventory of all the property, movable, immovable, rights and credits belonging to the said succession of C. M.
169 Randolph, D., be it either separate, community, or community in partnership.

The appraisers required by law were William H. Bassett and Stephen S. Pearce, chosen and duly named by all the parties above named, and to whom as appraisers I, notary, administered the following oath, and this before proceeding to any valuation:

THE STATE OF LOUISIANA, )
*Parish of Avoyelles.* )

We, undersigned, do solemnly swear that we will well and truly and to the best of our knowledge and understanding value the property belonging to the succession of C. M. Randolph and situated within this parish, so help us God.

(Signed) W. H. BASSETT, JR.
S. S. PEARCE.

Sworn to and subscribed before me, notary, this 6th day of November, A. D. 1868.

(Signed) EDOUARD DE GENERES, *Not. Pub.*

When this being done I began the said inventory in the manner and form as follows, to wit:

*Inventory.*

Separate property.

| | | |
|---|---|---|
| Article 1. | One grey mare, valued at the sum of one hundred and twenty-five dollars | $125 00 |
| 2. | One brown mare, valued at the sum of fifty dollars | 50 00 |

170 N. B.—This mare has been bequeathed by C. M. Randolph to his son, William Kein, the same having been purchased with this purpose.

Article 3. A revolver, valued at the sum of twelve dollars ..... $12 00

Total of separate property, one hundred and eighty-seven dollars ..... $187 00

*Community Property.*

Article 1. Dora plantation.

| | | |
|---|---|---|
| Three and a half bales cotton in the seed, valued at $1,500 per bale, $5,250, at 5c., two hundred and sixty-two dollars and fifty cents ..... | $262 50 | |
| Less one-half belonging to laborers ..... | 131 25 | |
| Leaving amount ..... | 131 25 | |
| Less one-half belonging to Miss D. Lambeth ..... | 65 62½ | |
| Leaves net amount community, 65.62½ ..... | 32 81¼ | |
| Being for the share of C. M. Randolph in community the one-half thereof, thirty-two $\frac{81}{100}$ dollars ..... | | 32 81 |

Lucky Hit plantation.

| | | |
|---|---|---|
| Art. 2. Thirty-eight bales of cotton in the seed, valued at $1,500 p'r bale, | | |
| 171 $57,000 at 5c., two thousand eight hundred and fifty doll's ..... | $2,850 00 | |
| Less one-half to laborers ..... | 1,425 00 | |
| Leaves community & c'y in partnership .. | 1,425 00 | |
| Less one-half to Miss D. Lambeth ..... | 712 50 | |
| Leaves in community ..... | 712 50 | |
| Making the share of C. M. Randolph in the same the one-half thereof ..... | 356 25 | |
| | | $356 25 |

*Leinster Plantation.*

Stock, &c.

| | |
|---|---|
| 26 mules, $110 p. head, two thousand six hundred and eighty dollars ..... | $2,680 00 |
| 6 cows, sheeps, goats, one hundred and fifty dollars ..... | 150 00 |
| 8 large ploughs, $8, sixty-four dollars ..... | 64 00 |

| | | |
|---|---|---|
| 11 small ploughs, $5, fifty-five dollars | 55 00 | |
| 1 bellows, twenty-five dollars | 25 00 | |
| 16 horse collars, 75c., twelve dollars | 12 00 | |
| 16 bridles, 50c., eight dollars | 8 00 | |
| 16 hames, 50c., eight dollars | 8 00 | |
| 16 chains, 50c., eight dollars | 8 00 | |
| 8 spades, 50c., four dollars | 4 00 | |
| Three thousand one hundred and ninety-four dollars | $3,194 00 | |
| 172 Less one-half thereof belonging to Miss D. Lambeth, in partnership | $1,597 00 | |
| Leaves community | $1,597 00 | |
| One-half thereof, being C. M. Randolph's share in community | 798 50 | |
| | | $798 50 |
| Total of personal effects in community, eleven hundred and eighty-eight $\frac{26}{100}$ dollars | | $1,188 26 |

*Rights and Credits.*

Art. 1. Dora plantation.

| | | |
|---|---|---|
| Rents due | $700 00 | |
| Miss D. Lambeth, one-half | 350 00 | |
| Leaves community | $350 00 | |
| The one-half thereof, share of C. M. Randolph's estate | 175 00 | |
| | | 175 00 |

Art. 2d. Lucky Hit plantation.

| | | |
|---|---|---|
| Rents due and advances | $1,200 00 | |
| Miss D. Lambeth, her half | 600 00 | |
| Leaves to community | $600 00 | |
| The one-half thereof to C. M. Randolph's share | 300 00 | |
| | | 300 00 |
| Art. 3d. Balance in cash, Citizen's | | |
| 173 bank, at New Orleans | $721 34 | |
| Miss D. Lambeth, her half | 360 67 | |
| Leaving community | $360 67 | |
| The one-half thereof, share of C. M. Randolph's estate, one hundred and eighty $\frac{38}{100}$ dollars | 180 38 | |
| | | 180 38 |

This money in bank is claimed on the property of Miss D. Lambeth and Mrs. Fanny B. Lambeth and not belonging to the community, making the whole amount of rights and credits six hundred and fifty-five and $\frac{38}{100}$ dollars ..... $655 38

And there being nothing more to inventory I closed the same, having inventoried as follows:

| | |
|---|---|
| Separate property in amount, one hundred and eighty-seven dollars ..... | $187 00 |
| Community effects in amount, eleven hundred and eighty-eight & $\frac{26}{100}$ dollars ..... | 1,188 26 |
| Rights and credits in amount, six hundred and fifty-five and $\frac{38}{100}$ dollars ..... | 655 38 |
| Making the whole amount of the succession of C. M. Randolph two thousand and thirty dollars and sixty-four cents ..... | $2,030 64 |

E. & O. E.

In faith whereof the parties above named and the ap-
174 praisers aforenamed have hereto signed their names in the presence of Jerry T. Muse and Nivatte K. Pearce, witnesses, both of this parish, who hereto sign as such with me, notary, on the day, month, and year first above written, at the hour of four o'clock p. m.

(Original signed) W. H. BASSETT, JR.
S. S. PEARCE.
FANNY B. RANDOLPH.
DORA LAMBETH.
M. BENNETT, *Att'y-in-Fact.*
EDUARD DE GENERES, *Not. Pub.*

Witnesses:
J. F. MUSE.
N. K. PEARCE.

A true copy of the original inventory retained by me, notary, Nov. 6th, 1868.

Avoyelles, November 7th, 1868.

(Signed) EDUARD DE GENERES, *Not. Pub.*

*Document Marked "Mrs. R No. 2," Family Meeting and Proceedings and Adjudication of Property to Mrs. F. B. Randolph.*

THE STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

175 Be it known that on this twenty-second day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the

ninety-third, by virtue of a commission from the Hon. J. M. Edwards, judge of the parish court holding sessions in and for the parish of Avoyelles and State of Louisiana, the same to me directed, "authorizing and empowering me to convoke and hold according to law a family meeting, composed of Messrs. Maunsel Bennett, W. H. Winn, W. H. Basset, Dr. J. Ware, S. S. Pearce, and Joseph Cappel, in behalf of Peyton L. and Christopher M. Randolph, minor children of Christopher M. Randolph, dec'd, and Fanny B. Randolph, to deliberate and consult touching the interests of said minors, and more particularly whether it is to the interest of said minors that the property held in common between their dec'd father and their mother shall be adjudicated to them said mother at the price of estimation or not"—

I, Edouard de Generes, notary public in and for the parish of Avoyelles, in the State of Louisiana, duly commissioned and qualified—the said members having been notified, as may be seen by the returns hereto annexed, with the exception of Joseph Cappel, not at present in this parish—I, notary, went to Evergreen, in this parish, on the day first above written, then and there to hold said family meeting, as it was thereat it had been convened to take place, on Thursday, 22d day of April, 1869, at 9 a. m., at W. H. Bassett's store—

176 When, being then at the hour of nine o'clock of said day, and having waited until the hour of ten a. m., I proceeded to hold said family meeting, when before me personally appeared Dr. James Ware, Maunsel Bennett, Stephen S. Pearce, and William H. Bassett, Jr., but Dr. W. H. Winn having failed to attend, I appointed in his stead Robert R. Irion, all of these appearers being friends of said minors, there being no relative residing in this parish.

And before proceeding to any deliberation I, notary, first administered to the said appearers the oath required by law, as follows:

THE STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

We, undersigned, do solemnly swear that we will well and truly and to the best of our knowledge and understanding advise and deliberate touching the interests of Peyton L. and Christopher M., minor children of C. M. Randolph, d'sd, and Madam Fanny B. Lambeth, his surviving spouse, but more particularly as regards the adjudicating to the said F. B. Lambeth, mother of said minors, the community property at the price of evaluation, so help us God.

(Signed) JAMES WARE.
R. R. IRION.
M. BENNETT.
S. S. PEARCE.
W. H. BASSETT, JR.

Sworn to and subscribed before me, notary, this 22d of
177 April, A. D. 1869.

EDOUARD DE GENERES, *Not. Pub.*

When, this being done, the said appearers formed themselves into a family council, and, after long and mature deliberation and consultation, have unanimously decided that the community property be adjudicated to Mrs. Fanny B. Randolph at the price of inventory.

And to these presents personally intervened Theodore O. Stark, under-tutor of said minors, who declared that he was present at the deliberations of the family council and that he does, approving of the same, recommend the homologation of these proceedings.

In faith whereof the appearers and intervenor aforementioned hereto signed their names in the presence of Jerry T. Muse and Lorenzo Schofield, witnesses, both of this parish, who also sign as such with me, notary, on the day and year first written.

J. S. WARE.
M. BENNETT.
R. R. IRION.
S. S. PEARCE.
W. H. BASSETT, JR.
T. O. STARK, *Under-Tutor.*
EDOUARD DE GENERES, *N. P.*

Witnesses:
J. T. MUSE.
L. SCHOFIELD.

178 STATE OF LOUISIANA, )
*Parish of Avoyelles.* )

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office in Book C, folio 323, filed April 29th, 1869.

Given under my hand and seal of office, at Marksville, Avoyelles, La., this 1st day of May, A. D. 1886.

[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk.*

*Decree (with Petition) Homologating Above Document, "Mrs. R. No. 3.*

To the honorable the judge of the parish court, sitting in and for the parish of Avoyelles, State of Louisiana:

The petition of Mrs. Fanny B. Lambeth, a resident of said parish and natural tutrix of her minor children, the issue of her marriage with Christopher M. Randolph, deceased, with respect represents that your petitioner herewith presents for homologation the proceedings of a family meeting held before Edouard De Generes, a notary public, on the 22d day of April, 1869, recommending that the property held in community between your petitioner and the succession of the said C. M. Randolph be adjudicated to your petitioner at the price fixed by the estimative inventory.

The premises considered, your petitioner prays that the
179 proceedings of said family meeting be homologated in all its parts and that the property held in community between her-

self and the succession of her said husband be adjudicated to her at the price of estimation, and she prays for all other orders and decrees necessary in the premises and for general relief.

By her attorneys, IRION & OVERTON.

Let the proceedings of the family meeting held before Edward De Generes, notary public, on the 22d of this month and year recommending the adjudication of the property held in community between Fanny B. Lambeth and Christopher M. Randolph, her deceased husband, be homologated in all its parts and particulars.

Parish judge's office, Marksville, Avoyelles, April 29, 1869.

J. M. EDWARDS, *Ph. Judge.*

Filed 29th April, 1869.

A true copy.
Attest: May 24th, 1886.
[SEAL.] (Signed) A. E. GREMILLION, *D'y Clerk.*

*Document "Mrs. R, No. 4," Certified Copy of the Partition.*

180 Mrs. F. B. Randolph & Mrs. & Mr. T. O. Stark:

We have in conformity with your request made the following appraisement of your property, comprising the Leinster & Dora plantations, in the subdivisions requested, viz:

That part of Leinster plantation contained in the sugar-house field and between the four (4) public roads surrounding it (exclusive of the lakes), at $40 per acre. This valuation is made with reference to the improvements in sugar-house machinery and buildings thereon. Some of the land is not worth so much, but is made so by the improvements in sugar-house, &c.

The lands to the north of the road leading from Stewart's to Marksville and on the west of the Marksville road we appraise at $25 p-r acre for the cleared land and at $10 p-r acre for the wood land.

The land in sections 34 & 38 south of the road leading from John Ewell to Frith's we appraise at $25 p-r acre for the cleared land under fence; at $20 p-r acre for cleared land not under fence, and at $10 for the wood land p-r acre.

The land to the east of the public road leading towards Marksville and in sections 23, 13, and 14 we appraise at $10 p-r acre, being wood land, with the exception of the Hick's field, unfenced, and a small field occupied by John Breeler.

The vacuum pan (copper) and the tanks and clarifiers connected with it are appraised at $1,500.

The Dora plantation, for that part in the sugar-house field and the field south of the bayou cleared and under fence, we ap-
181 praise at $40 p-r acre; the cleared land on the opposite side of the bayou to the sugar-house we appraise at $25 p-r acre, and the wood land belonging to the plantation, including the Boyce and Coco tracts, we appraise at $10 p-r acre, referring you to the sub-

joined sheet for calculations of the value of the respective plantations in accordance with the foregoing appraisement.

Respectfully submitted.

(Signed) R. R. IRION.
JOS. CAPPEL.
WM. H. WINN.

Whereas the subscribers, Fanny B. Randolph and Dora L. Stark, being desirous of dividing their joint property, requested Messrs. M. Wells, R. R. Irion, Joseph Cappel, and Wm. H. Winn, or any three of them, to make an appraisement of the Leinster and Dora plantations in the mode requested, a copy of their letter containing their said request and the report of Messrs. Irion, Cappel, and Winn being hereto attached; and whereas it appears from the annexed plan of Leinster plantation made by M. Bennett that there is contained in the sugar-house field on Leinster plantation and in the lands to the north of it and west of the public road leading past Stanley's sawmill to Marksville, being one lot, as follows, section No. 27, acres, 633.88.

| | | |
|---|---|---|
| Less that part west of fence in public road 18 | | 615.88 |
| Less contained in Tanner's lake | | 126 |
| | | 489.88 |
| | West of S. W. qr. of sec. 26 | 80.56 |
| 182 | Lot 5 of section 22 | 92 |
| | Lot 6 " 22 | 108.20 |
| That part of E. ½ of lot 3 of sec. 12 south of Bayou Huff-power | | 16.82 |
| That part of lots 1 & 2 do | | 45.84 |
| That part of sec. 21 east of public road | | 13.44 |
| | Total in sugar-house field—acres | 846.75 |
| To the north of sugar-house field and cleared and fenced, 16.82; part of E. ½ of lot 3 and part of lots 1 & 2, 66.10; 36.44 | | 119.36 |
| Woodland to the north of sugar-house field and west of the public road leading to Marksville, west ½ of S. E. qr. of section 15 | | 77.76 |
| East ¼ of S. W. qr. of sec. 14 | | 80.86 |
| S. W. ¼ of S. E. qr. 14 | | 40.00 |
| That part of east half of S. E. qr. of section 14 lying west of public road | | 20.50 |
| That part of lots 1, 48; 2, 55, and 3, 75, lying north and west of public road | | 178 |
| | Total acres | 396.62 |

Lot number two.

| | | | |
|---|---|---|---|
| Lot 1 of section 13 | | | 39.68 |
| 2 | 13 | | 116.36 |
| Lot 1 | 24 | | 28.82 |
| That part of S. E. qr. of section 14 east of public road | | | 61.64 |
| 183 That part of lots 1, 2, 25.12, and 3, 5.12, of section 23 southeast of public road | | | 80.52 |
| Lot No. 4 of section 23 | | | 96 |
| | | | 423.02 |

Lot No. three.

| | | | |
|---|---|---|---|
| Cleared and under fence in section 34 | | | 260.81 |
| Cleared, but not fenced, in " | 34 | | 44.80 |
| Do. | 35 | | 88.44 |
| Woodland in section 34 | | 236.96 | |
| Do. | 35 | 65.15 | |
| | | | 302.11 |

Lot number four, Dora.

| | | | |
|---|---|---|---|
| Sugar-house field and south of bayou, that part of N. ½ of sec. 8 and part of lots 4, 9, and 5 south of Bayou Rouge | | | 389 |
| Lot number four (4), Dora, cleared land south of bayou | | | 389 |
| Cleared land north of bayou, part of section 8 | | 4 | |
| part of section- 5 and 6 | | 93 | |
| | | | 97 |

Woodland.

| | | | |
|---|---|---|---|
| Part of so'east qr. and so. half no'east qr. of section 6 | | 156 | |
| Part of so'west qr. of sec. 5 | | 42 | |
| Do. west | 5 | 30 | |
| Lot No. 6 of sec. 5 | | 76.41 | |
| In section 8 | | 12 | |
| | | 316.41 | |
| Bayou & Coco tracts | | 264.76 | |
| | | | 581.17 |

184 *Recapitulation.*

Value of lot No. 1, sugar-house field:

| | |
|---|---|
| Leinster, 846.74 acres, at $40 pr. acre | $33,869 50 |
| Marshall field, part of lots 1, 2, & 3 of S. 22, 119.36, at $25 pr. acre | 2,984 00 |
| Woodland in lot one, 396.62, at $10 | 3,966 20 |
| | $40,819 80 |

Lot No. two.

| | | |
|---|---|---|
| Woodland, 423.02 acres, at $10 | | $4,230 20 |

Lot No. three.

| | | |
|---|---|---|
| Land cleared and under fence, 260.81, at 25 | | 6,520 25 |
| Land cleared, but not fenced, 133.24, at 20 | | 2,664 80 |
| Woodland in sec. 34 & 35, 302″, at $10 | | 3,021 10 |
| | | $12,206 15 |

Lot No. four.

| | | |
|---|---|---|
| Cleared land south of bayou, 389, at 40 | | 15,560 |
| Cleared land on north side of bayou, 97, at 25 | | 2,425 |
| Woodland north of bayou and sugar-house | 316.41 | |
| Boyce tract, N. E. qr. sec. 17 | 160 | |
| Coco tract, west half of west half so'west qr. of sec. 9 and 24 acres to east of that west half | 104.76 | |
| | 581.17, at 10, | 5,811 70 |
| | | $23,796 70 |

| | | | |
|---|---|---|---|
| 185 | Leinster, lot No. 1 | 40,819 80 | |
| | 2 | 4,230 20 | |
| | Walnut field in S. 34 & 35 | 12,206 15 | |
| | | | 57,256 15 |
| | Dora plantation | | 23,796 70 |
| | | | $81,052 85 |
| | One-half | | 40,526 43 |

The said Mrs. Randolph takes as her part and share in the division lot No. one, containing the sugar-house field on Leinster plantation, and lands north of it and west of the public road leading to Marksville, appraised at forty thousand eight hundred and nineteen $\frac{80}{100}$ dollars ($40,819.80).

And the said Mrs. Stark takes as her share in the division lots No. 2, being that part of Leinster in sections 13, 14, 23, & 34, south and east of the public road leading past Stanley's mill, towards Marksville, valued at forty-two hundred and thirty $\frac{20}{100}$ dollars, $4,230.20.

Lot No. three, being that part of Leinster plantation in sections 34 & 35, valued at twelve thousand two hundred and six $\frac{15}{100}$ dollars, $12,206.15.

Dora plantation, in sections 5, 6, 8, 9, and 17, as detailed, appraised at twenty-three thousand seven hundred and ninety-six $\frac{70}{100}$ dollars, $23.796.70; total, $40,233.05.

And the said several parties do hereby mutually abandon
186 to each other the undivided half now owned by them in the respective lots of land hereby taken by each respectively in full ownership—

That is to say, Mrs. Randolph cedes and abandons to said Mrs. Stark the undivided half of Dora plantation and that part of Leinster plantation in sections 34 & 35 and east and south of the road leading past Stanley's mill toward Marksville.

And the said Mrs. Stark cedes and abandons to said Mrs. Randolph the undivided half in Leinster sugar-house field and lands north and west of the public road contained in lot firstly described. The word east interlined.

January 9th, 1873.

F. B. RANDOLPH.
DORA L. STARK.
T. O. STARK.

Witness:
A. C. TOWNSEN.

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office in Alienation Book M M, folio 384 *et seq.*, filed Feb'y 1st, 1873.

Given under my hand and seal of office, at Marksville, Avoyelles parish, Louisiana, on this 22d day of May, A. D. 1886.

[SEAL.] (Signed) T. J. ARMITAGE,
*Deputy Clerk & Recorder.*

Document "Mrs. R. No. 5," a certified copy of the final
187 account of Mrs. Fanny B. Randolph, administering C. M. Randolph's succession as tutrix.

DR.

Account of administration of estate of Christopher M. Randolph, deceased, rendered by Fanny B. Randolph, tutrix and survivor in community.

| | |
|---|---|
| To this amount paid Dr. W. H. Winn for services as physician in last illness | $268 25 |
| this amount paid Dr. J. Ware for services as physician | 100 |
| this amount paid Dr. W. H. Winn for medical services during year 1868 to deceased and wife and children | 212 60 |
| W. L., ditto for coffin | 40 |
| A. B. Irion and Overton, for legal services in the succession | 100 |

| | | | |
|---|---|---|---|
| | Edward De Generes, not. pub., for taking inventory of succession | | 46 60 |
| | the following debts of the community created in carrying on the planting partnership between the community & Miss Dora Lambeth, now wife of T. O. Stark, viz: To Wright, Allen & Co., of New Orleans, for supplies furnished to Leinster plantation up to 22d Sept'r, 1868 | 1,192 49 | |
| | To amounts brought forward | 1,192 49 | 8767 45 |
| 188 | To amounts brought forward | 1,192 49 | 767 45 |
| | To Dr. Ware for medical services | 56 00 | |
| | To W. H. Bassett for supplies | 100 35 | |
| | R. L. Tanner for sawing | 50 00 | |
| | S. G. Pearce for hauling | 22 86 | |
| | W. M. Ewell for supplies | 12 25 | |
| | this amount due to and paid to the laborers on Leinster Pa., worked in partnership between community and Miss Lambeth, now Mrs. Stark, viz., 17 field hands, 1 blacksmith, cooler, gardener, &c.: total for year 1868 3,375 75 | | |
| | Less portion accrued after 22d September, 1868, date of dissolution of community 914 25 | | |
| | | 2,461 50 | |
| | Less previously paid | 1,493 03 | |
| | | 968 47 | |
| | To amount due to estate & heirs of late Jno. Rhea of the community between himself and wife or to whom of right for the price of movable property purchased by the partnership between community and Miss Lambeth and for which Mrs. Randolph and Miss Lambeth have mortgaged their separate property by act of 1st Jan'y, 1868, and all of which property so purchased and existing in kind was inventoried as part of the effects of this succession, due 1st Jan'y, 1870 8,970 12 | | |
| | To amounts carried forward | 2,402 42 | 8767 45 |
| 189 | To amounts brought forward | 2,402 42 | 767 45 |

| | | | |
|---|---|---|---|
| Interest accrued to 22d September, 1868, date of dissolution | 538 20 | | |
| | | 9,508 32 | |
| Total amount | | 11,910 74 | |
| Of the community, one-half | | 5,955 37 | |
| And of deceased, one-half thereof, or | | | 2,977 68 |
| Or thirty-seven hundred and forty-five dollars $\frac{13}{100}$ | | | 3,745 13 |

(Signed) FANNY B. RANDOLPH.

Filed 29th April, 1869.
(Signed) J. M. EDWARDS, *Ph. Judge.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify that the foregoing is a true and correct copy of the original on file and of record in my office.

Given under my hand and seal of office, at Marksville, Avoyelles, La., on this first day of May, A. D. 1886.

(Signed) A. J. LAFARGUE,
[SEAL.] *Clerk of Court.*

190 Document "Mrs. R. No. 6," a certified copy of decree releasing her mortgage on such rendition and settlement of the account and discharge.

Fanny B. Randolph, Nat. Tu*r*tix, from Suc'n of C. M. Randolph. } Filed Jan'y 19th, 1883.

*Release of Mortgage, Succession of C. M. Randolph.*

No. 6829.

Dist. Court, Parish of Avoyelles.

Court in session this twenty-first day of December, A. D. 1882.

Present: The Hon. Wm. F. Blackman, district judge.

This cause coming on to be heard in its regular order, and it appearing to the court that the final tableau of administration in the above succession has been homologated and confirmed and an order granted discharging the land mortgage recorded against the administration of said succession by the recording of the inventory, so far as payments of debts of said succession has been made, and that the debts of said succession have been paid and extinguished to a larger amount than the inventory:

It is therefore ordered, adjudged, and decreed that the prayer of the petition be granted and that the mortgage recorded against the

said Fanny B. Randolph, as tutrix aforesaid, be cancelled and erased from the books of the recorder. Thus done, read, and signed in open court, at Marksville, this 21st day of December, A. D. 1882.

W. F. BLACKMAN, *Judge.*

Filed Dec. 21st, 1882.

G. H. COUVILLON.

A true copy.
Attest: G. H. COUVILLON, *D'y Clerk.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to be a true and correct extract as taken from the Mortgage Book in my office, No. 30, folio 526.

Given under my hand and seal of office, at Marksville, Avoyelles, La., 25th May, A. D. 1886.

[SEAL.] (Signed) T. J. ARMITAGE,
*D'y Clerk & Recorder.*

Document "Mrs. R. No. 7," original list of the horses and mules bought by C. M. Randolph from the John Rhea estate.

*Number and Names of Mules and Horses Bought by Capt. C. M. Randolph from the Est. of John Rhea.*

192

| Names. | Frith's lot. | Blair's lot. |
|---|---|---|
| Fox, large gray horse mule | 1 | |
| Tom, do. sorrel do. | 1 | |
| Sarah, brown M. mule | 1 | |
| Claiburn, brown H. mule | 1 | |
| Clinton, dark brown H. M. | 1 | |
| Tennessee, dun M. M. | 1 | |
| Sally, dark brown M. M. | 1 | |
| Jenny, sorrel M. M. | 1 | |
| Duncan, dark bay H. M. | 1 | |
| Jim, black H. M. | 1 | |
| Crokitt, light brown H. M. | 1 | |
| Louisiana, bay M. M. | 1 | |
| Mike, dark brown H. M. | 1 | |
| Frank, dark sorrel H. M. | 1 | |
| | 14 | |
| Jannette, large sorrel M. mule | | 1 |
| Susan, sorrel M. M. | | 1 |
| Cuba, small bay H. M. | | 1 |
| Pigeon, brown M. M. | | 1 |
| Ned, bay H. M. | | 1 |
| Pretty, sorrel M. M. | | 1 |

| | |
|---|---|
| Buck, dark bay H. M. | 1 |
| Mary, sorrel M. M. | 1 |
| Dunn, dun H. M. | 1 |
| Tom, gray H. M. | 1 |
| Bully, bay H. M. | 1 |
| Puss, sorrel M. M. | 1 |
| Dove, sorrel M. mule | 1 |
| | 13 |

193 Horses.

| | |
|---|---|
| Ben, large sorrel H., sold to Mr. Scott, by Capt. C. | 1 |
| Bill or Texas, sorrel H. | 1 |
| Mary, dark brown M. | 1 |
| Bill, dark brown colt | 1 |
| | 4 |

| | |
|---|---|
| Frith's lot | 14 mules. |
| Blair's " | 13 mules. |
| Do. " | 4 horses. |
| | 31 horses and mules. |

Bill, dark bay sorrel, taken Lieut. by Collins, by order from h'dq'rs F. B., N. O.

*Document "Mrs. R. No. 8," Sketch of Power of Att'y.*

Personally came and appeared —— ——, who declared that they have made, constituted, and appointed and by these presents do make, constitute, and appoint the said T. O. Stark their true and lawful attorney-in-fact for them and in their names to settle and establish the payment made and the amount still due by them on a mortgage note of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, dated Jan'y 1st, 1868, held by Mrs. Rosetta Rhea, to
194 make such endorsement on said note as may be necessary to devote the amount still due, and to interrupt proscription, to consent to any subrogation in favor of any person or persons or commercial firms who may pay a portion of their said indebtedness on said note, and thus divide their said indebtedness, and to appear and sign in their name any agreement, document, or notarial act carrying out said subrogation, with any clauses or conditions which the said attorney in his discretion deem- proper; to enter into some arrangement with the said Mrs. Rosetta Rhea, her agent or attorney, in order to obtain an extension of time for the payment of the balance due on said promissory note, said extension of time to be granted and accepted upon any and all terms and conditions which the said attorney may in his discretion deem fit; to sign a notarial act for that purpose, and to acknowledge therein, in their name, that they recognize the said Mrs. Rosetta Rhea as the only legal heir of

her late husband, John Rhea,* which facts the said appearers hereby acknowledge, with full power of substitution.

And generally to do everything necessary to be done to carry out the premises as fully and amply as the said appearers might do if personally present, hereby ratifying all that the said attorney may lawfully do or cause to be done by virtue hereof.

195 Documents "Mrs. R. No. 9 and Mrs. R. No. 10," being the two drafts drawn by Mrs. Rosetta Rhea, one for $1,500 and the other for $1,000.

"*Mrs. R. No. 9.*"

$1,000.00. MADISON, IND., *April* 6, 1870.

At thirty days sight' pay to the order of D. G. Phillips, cash'r, one thousand dollars, value received, and charge to account of—
ROSETTA RHEA.

To T. O. Stark, New Orleans, La.

(Stamps.)

Written across face: April, 18th. '70. T. O. Stark.
Endorsed: Pay A. Suria, cashier, or order, for collection account of National Branch Bank of Madison, Ind. D. G. Phillips.

"*Mrs. R. No. 10.*"

$1,500.00. MADISON, IND., *April 6th*, 1870.

At sixty days' sight pay to the order of D. G. Phillips, cash'r, fifteen hundred dollars, value received, and charge to account of—
ROSETTA RHEA.

To T. O. Stark, New Orleans, La.

(Stamps.)

Written across face: April 18th, '70. T. O. Stark. Paid Jan'y 11, '71. Rosetta Rhea, *ppr* R. Ryan.

196 Endorsed: Pay A. Suria, cashier, or order, for collection account of National Branch Bank of Madison, Ind. D. G. Phillips. Rec'd, New Orleans, June 20, '70, on ac. within five hundred dollars. Geo. P. Betts, note clerk La. Nat'l b'k. Rec'd, New Orleans, July 22, '70, on ac. within five hundred dollars. La. Nat'l B'k. —— Betts, note cl'k.

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*Recognized as such by the court of Jefferson county, Indiana, in the matter of the estate of John Rhea, deceased, and as such alone entitled to the payment of said note.

Document "Mrs. R. No. 11," being a duly certified copy of the said final account of Mrs. F. B. Randolph of her administration of her said deceased husband's estate, together with the decree of homologation thereon and certificates of authentication.

DR.

Account of administration of estate of Christopher M. Randolph, deceased, rendered by Fanny B. Randolph, tutrix and survivor in community.

| | | | | |
|---|---|---|---|---|
| | To this amount paid Dr. W. H. Winn for services as physician in last illness | | | 268 25 |
| 197 | To this amount paid Dr. J. Ware for services as physician | | | 100 00 |
| | To this amount paid Dr. W. H. Winn for medical services during year 1868 to deceased and wife & children | | | 212 60 |
| | W. L., ditto for coffin | | | 40 00 |
| | A. B. Irion & Overton for legal services in the succession | | | 100 00 |
| | Edouard de Generes, not. pub., for taking inventory of the succession | | | 46 60 |
| | the following debts of the community, created in carrying on the planting partnership between the community and Miss Dora Lambeth, now wife of T. O. Stark, with Wright, Allen & Co., of New Orleans, for supplies furnished to Leinster plantation up to 22d Sept., 1868 | | 1,192 49 | |
| | Dr. Ware for medical services | | 56 | |
| | W. H. Basset for supplies | | 100 35 | |
| | R. L. Tanner for sawing | | 50 | |
| | S. G. Pearce for hauling | | 22 86 | |
| | W. M. Ewell for supplies | | 12 25 | |
| | this amount due to and paid to the laborers on Leinster p'n, worked in partnership between community and Miss Lambeth, now Mrs. Stark, viz., 17 field hands, 1 blacksmith, cook, gard-ner; total for year 1868 | 3,375 75 | | |
| 198 | To amounts brought forward | | 1,433 95 | 767 45 |
| | Amounts due laborers on Leinster pl'n brought up | 3,375 75 | | |
| | Less portion accrued after 22nd September, 1868, date of dissolution of community | 914 25 | | |
| | | 2,461 50 | | |
| | Less previously paid | 1,493 03 | | |
| | | | 968 47 | |

| | | | |
|---|---|---|---|
| Amount due to estate and heirs of late Jno. Rhea or of the community between himself and wife or to whom of right for the price of movable property purchased by the partnership between community and Miss Lambeth, and for which Mrs. Randolph and Miss Lambeth have mortgaged their separate property by act of 1st Jan'y, 1868, and all of which property so purchased or existing in kind was inventoried as part of the effects of this succession, due 1st Jan'y, 1870 | 8,970 12 | | |
| Interest accrued to 22d September, 1868, date of dissolution | 538 20 | | |
| | | 9,508 32 | |
| Total amount | | 11,910 74 | |
| Of the community one-half | | 5,955 37 | |
| And of deceased one-half thereof, or | | | 2,977 68 |
| Thirty-seven hundred and forty-five dollars $\frac{13}{100}$ | | | 3,745 13 |

FANNY B. RANDOLPH.

199 Succession of C. M. Randolph.

In the above succession Mrs. Fannie B. Randolph having rendered a final account of her administration as tutrix and the same having been advertised as the law requires, of which due proof was made, and there being no opposition, and the law and the evidence being in her favor—

It is therefore ordered, adjudged, and decreed that the said account be homologated in all its parts and particulars. It is further ordered that the recorder shall erase the tacit or legal mortgage in favor of the minors to the amount of the debts paid, viz:

Thus done and signed in open court on this 7th day of June, A. D. 1871.

J. M. EDWARDS,
*Parish Judge.*

Filed 7 June, 1871.

F. RICORD, *Dy Clk.*

STATE OF LOUISIANA,
*Parish of Avoyelles.*

I do hereby certify that the above and foregoing is a true and correct copy of the original account and judgment homologating same in the succession of Christopher M. Randolph, deceased, duly filed and of record in my office.

Given under my hand and seal of office, at Marshall, Avoyelles, Louisiana, on this 20th day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.] (Signed) A. J. LAFARGUE,
*Clerk Dist. Court, Avoyelles, La.*

200 STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I, Thomas Overton, judge twelfth judicial district of Louisiana, do hereby certify that the above attestation of A. J. Lafargue, clerk district court, Avoyelles, La., is in due form.

Given under my hand, at Marksville, La., on this 20th day of May, A. D. 1887.

(Signed) THOMAS OVERTON,
*Judge 12th Jud'l District of Lou'a.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify that Thomas Overton is judge in the twelfth judicial district of Louisiana, and that this signature appended to the above certificate as such is genuine.

Given under my hand and seal of office, at Marksville, Avoyelles, La., on this 20th day of May, A. D. 1887.

[SEAL.] (Signed) A. J. LAFARGUE,
*Clerk Dist. Court, Avoyelles, La.*

*Document "Mrs. R. No. 12," Petition and Decree Releasing Mortgage and Granting Mrs. Randolph a Discharge.*

Succession of C. M. RANDOLPH.

To the honorable judge of the 12th judicial district and
201 parish of Avoyelles:

The petition of Fanny B. Randolph, tutrix of the minor children, issue of her marriage with the late C. M. Randolph, and as such administratrix of his estate, with respect represents—

That her final tableau of administration has been heretofore homologated and confirmed and an order granted discharging the tacit mortgage recorded against her by the recording of the inventory, so far as payments of debts of the succession had been made. She further represents that the debts of the succession have been paid and extinguished, and to a larger amount than the inventory.

Wherefore she prays that the mortgage recorded against her as tutrix aforesaid be cancelled and erased from the books of the recorder, and as in duty bound will ever pray.

W. HALL,
*Att'y for Petitioner.*

Filed December 22d, 1882.

G. H. COURVILLON,
*Dy Clerk.*

District Court, Parish of Avoyelles. No. 6829.

Succession of C. M. RANDOLPH; FANNY B. RANDOLPH, Nat. Tutrix.

Court in session this twenty-first day of December, A. D. 1882.
Present: The Honorable Wilber F. Blackman, dist. judge.

This cause coming on to be heard in its regular order and it appearing to the court that the final tableau of administration in the above succession has been homologated and confirmed and
202 an order granted discharging the land mortgage recorded against the administratrix of said succession by the recording of the inventory, so far as payment of debts of said succession has been made, and that the debts of said succession have been paid and extinguished to a larger amount than the inventory:

It is therefore ordered, adjudged, and decreed that the prayer of the petitioner be granted, and that the mortgage recorded against the said Fannie B. Randolph, as tutrix aforesaid, be cancelled and erased from the books of the recorder.

Thus done, read, and signed in open court, at Marksville, this 21st day of December, A. D. 1882.

W. F. BLACKMAN, *Judge.*

Filed December 21st, 1882.

G. H. COUVILLON, *Dy Clerk.*

STATE OF LOUISIANA, }
*Parish of Avoyelles,* }

I do hereby certify that the above and foregoing is a true and correct copy of the original petition and judgment of court in suit No. 6829 of the district court of the parish of Avoyelles, La., duly filed and of record in my office.

Given under my hand and seal of office, at Marksville, Avoyelles parish, La., on this 20th day of May, A. D. 1887.

[SEAL.] (Signed) A. J. LAFARGUE,
*Clerk Dist. Court, Avoyelles, La.*

STATE OF LOUISIANA, }
*Parish of Avoyelles,* }

203 I, Thomas Overton, judge twelfth judicial district of Louisiana, do hereby certify that the above attestation of A. J. Lafargue, clerk district court, Avoyelles, Louisiana, is in due form.

Given under my hand, at Marksville, La., on this 20th day of May, A. D. 1887.

(Signed) THOMAS OVERTON,
*Judge 12th Jud'l Dist. La.*

STATE OF LOUISIANA, }
*Parish of Avoyelles,* }

I do hereby certify that Thomas Overton is judge in the twelfth judicial district of Louisiana, and that his signature appended to the above certificate as such is genuine.

Given under my hand and seal of office, at Marksville, Avoyelles, La., on this 20th day of May, A. D. 1887.

[SEAL.] (Signed) A. J. LAFARGUE,
*Clerk Dist. Court, Avoyelles, La.*

EXHIBIT D, 3d May, 1887, Before the Master and Marked "Mrs. R. No. 4."

Whereas Mrs. Rosetta Rhea, of Madison, Indiana, is the holder and owner of a certain promissory note, made by Fanny B. Randolph, wife of C. M. Randolph, and Dora Lambeth to the order of said Mrs. Rosetta Rhea, for the sum of $8,970.12 *dollars*, dated
204 January 1st, 1868, payable two years after date, with interest, at eight per cent. per annum, from date until paid, and secured by mortgage, by act before Ed. de Generes, notary, of even date with said note, on the "Leinster plantation," situated on Bayous Huffpower and Clair, in the parish of Avoyelles, in the State of Louisiana, and fully described in said act, on which note there is a balance due to Mrs. Rhea on the 5th day of March, 1882, of four thousand eight hundred and seventy-three dollars;

Whereas the makers of said note have applied to said Mrs. Rhea for an extension of time for the payment of the balance due on said note:

Now, therefore, the said Mrs. Rhea, without novation or prejudice to the mortgage securing the same, does hereby postpone the payment of the balance due on said note to March 5th, 1884, on the following express stipulations and conditions:

That on the 5th day of March, 1883, the makers of said note shall pay to Mrs. Rhea one year's interest at 8 % per annum on the whole amount of said note.

That any parties holding a portion of said mortgage debt under payments made with subrogation shall grant to the makers of said note an extension of time for a period not less than the one herein given.

That should execution be issued against said Leinster plantation by any one, then the present agreement to come to come to an end and said debt to be at once exigible.

That the taxes on said plantation shall be regularly paid.

That nothing herein contained shall be construed as in
205 anywise impairing the priority which Mrs. Rhea now has for the payment of the debt due her over the parties holding a portion of said debt under subrogation.

That the owner of said Leinster plantation shall enter into some agreement within a reasonable time with Mr. Gennert or some other parties with a view to improving the said plantation and sugar-house thereon.

Should any of the above conditions be violated, then this agreement is to be null and void and of no effect, and the said mortgage debt to become immediately exigible.

(Signed) MRS. ROSETTA RHEA,
By her agent, N. B. TRIST.

New Orleans, March 24th, 1882.

*Original Non-Negotiable Note, Dated Jan. 1st, 1868, Signed Fanny B. Randolph, C. M. Randolph, Dora Lambeth.*

Avoyelles, La.,

$8,970.12. Leinster Plantation, *January* 1*st*, 1868.

Two years after date we promise to pay to the order of Mistress Rosetta Rhea, at the Citizens' Bank of Louisiana, in the city of New Orleans, eight thousand nine hundred and seventy and $\frac{12}{100}$
206 dollars, for value received, with interest at the rate of eight per cent. per annum from date until paid. Not negotiable.

FANNY B. RANDOLPH.
C. M. RANDOLPH.
DORA LAMBETH.

Written across face: *Ne varietur.* In conformity with an act passed this day before me and duly stamped $9.00. Avoyelles, January 1st, 1868. Edouard de Generes, not. pub.

*Ne varietur.* Partial release on tract 23.68 acres by act passed before me this day. New Orleans, May 5th, '77. N. B. Trist, not. pub.

*Ne varietur.* For identification with an act of payment, with subrogation to G. W. Sentell & Co., passed before me this day. New Orleans, July 2, 1879. N. B. Trist, not. pub.

Endorsed: Rosetta Rhea.

*Ne varietur.* By act passed before me this day, the amount due on this note in capital and interest at this date, after deduction of partial payments made at different times, has been fixed at the sum of nine thousand five hundred and seventy-seven $\frac{34}{100}$ dollars, ($9,577.34). Of the latter sum two thousand dollars have been paid to Mrs. Rosetta Rhea by Nalle and Cammack, of New Orleans, La., and a subrogation to that extent granted to them in and to the present note and in the mortgage securing the same, and the
207 payment of said balance has been extended to the first of March, 1874. New Orleans, April 28th, 1873. N. B. Trist, not. pub.

Rec'd four hundred dollars on ac. of the interest due on the within note this 21st April, 1875. Victor Olivier, Jr., ag't for Mrs. Rosetta Rhea.

Interest on the within note paid to July 4th, 1876. N. O., March 31st, 1876. Victor Olivier, Jr., agent of Mrs. Rosetta Rhea.

By mutual consent the payment of the within note is postponed to March 5th, 1878, interest having been paid to that date, and the principal has been reduced by payment made on account at various times to the sum of six thousand and seven hundred and forty dollars ($6,740), which is the amount now due thereon. New Orleans, May 5th, 1877. Victor Olivier, Jr., agent of Mrs. R. Rhea. T. O. Stark, agent for Mrs. Randolph and Mrs. Stark.

Interest on the within note has been paid to March 5th, 1879, to which date the payment of said note has been postponed. New Orleans, April 9th, 1878. Victor Olivier, Jr., agent of Mrs. R. Rhea.

The principal of within note has been reduced to $6,000 and all interest paid up to March 5, 1880, by act of p'ym't, with subrogation, passed before me this day. New Orleans, July 2, 1879. N. B. Trist, not. pub. Victor Olivier, Jr., ag't of Mrs. Rhea.

The sum of five hundred and one $\frac{91}{100}$ dollars were paid
208 this day on account of the within note (501.91). New Orleans, October 24, '79. Victor Olivier, ag't of Mrs. Rhea.

The principal of the within note has been reduced by payment to the sum of ($4,873) forty-eight hundred and seventy-three dollars and all interest thereon paid to March 5th, 1881, to which date payment of said sum is postponed. N. O., April 28, '80. Victor Olivier, Jr., agent for Mrs. R. Rhea. T. O. Stark, agent for Mrs. Randolph and Mrs. Stark.

*Ne varietur.* As per act of payment with subrogation. New Orleans, April 28, 1880. N. B. Trist, not. pub.

The payment of this note, principal of which now being $4,873, is, by consent of parties, postponed to March 5, 1882, interest having been paid up to that date, to wit, $389.84. N. B. Trist, ag't for Mrs. Rhea.

Received from G. M. Sentell & Co. this day three hundred and eighty-nine $\frac{84}{100}$ dollars in payment of one year's interest on the annexed note up to March 5, 1884; and I hereby subrogate them, up to that amount, to all my right under the mortgage securing said note, specially reserving, however, in my own favor priority of payment of balance due me thereon over said G. W. Sentell & Co. New Orleans, May 12, 1884. Rosetta Rhea, pp. N. B. Trist.

This note is extended to March 5th, 1884, without novation, subject to conditions contained in extension granted by Mrs. Rhea M'ch 24, 1882. May 12, '83. N. B. Trist, ag't for Mrs. R. Rhea.

209 *Evidence of Martha Groves and William J. Groves.*

EXHIBIT "A,"

Being certified copy of certain proceedings in the circuit court, Jefferson county, Indiana, marked Def'd'ts' No. 1.

STATE OF INDIANA, }
*County of Jefferson,* } *ss:*

In the circuit court of Jefferson county, in the State of Indiana, and before Hon. William T. Friedley, sole judge of said court, and at the January term, 1886, of said court, the following proceedings were had, to wit:

Be it remembered that on the 30th day of December, 1885, the following petition for partial payment of residuary legacy was filed in the clerk's office of said Jefferson circuit court, to wit:

In the Jefferson Circuit Court, January Term, 1886.

MARTHA GROVES and WILLIAM J. GROVES
*vs.*
THOMAS A. POGUE, Administrator, with the Will Annexed, of Rosetta Rhea, Deceased.

The above-named Martha Groves, of the city of Madison, Jefferson county, in the State of Indiana, and William J. Groves, of the city of Cincinnati, county of Hamilton and State of Ohio, respectfully show to the court that they are respectively the sister and brother of said testatrix, Rosetta Rhea, deceased, of whose estate the said Thomas A Poque is administrator, with the will
210 annexed; that said testatrix, by the 6th item or clause of her will, made the said petitioners her residuary legatees in these words, to wit: "Item 6. After the above-named bequests have been paid I will and bequeath all the rest and residue of my estate to be equally divided between my brother, William J. Groves, and my sister, Martha Groves."

The above-named petitioners further show to the court that said administrator has fully paid all the specific bequests and legacies mentioned in said will of said testatrix and all of the debts of said estate, except the expenses of administration, for the payment of which the said administrator has sufficient assets over and above the note and mortgage herein mentioned; that among the assets of said estate in the hands of said administrator, to which the said petitioners are entitled as residuary legatees, are a certain note and mortgage made by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to Rosetta Rhea, dated January 1st, 1868, for $8,970.12, reduced by partial payments to $4,873.60, with 8 % interest from March 5th, 1884, act of mortgage passed before Edward de Generes, notary public, Avoyelles parish, State of Louisiana, January 1st, 1868, upon a large tract of land in said parish known as the "Leinster plantation."

The petitioners show to the court that they are entitled to said mortgage and note and will receive the proceeds thereof upon final settlement of said estate; that the same will not be needed to pay debts or costs, and the collection thereof will be greatly facilitated if the petitioners are put in the possession of this asset and
211 the same is duly assigned to them under order of the court; and they now offer to account for the same if it should be needed to pay unexpected claims or expenses of administration.

Wherefore they pray an order of the court putting them in possession of said asset; that said note and mortgage be duly assigned to them as such residuary legatees, and for all proper relief upon such terms as the court may direct.

MARTHA GROVES.
WILLIAM J. GROVES.

And afterwards, to wit, on the 9th day of January, 1886, the same being the 6th judicial day of the January term, 1886, of said Jeffer-

son circuit court, and before the said Hon. Wm. T. Friedley, judge of said court, the following proceedings were had in said cause and entered of record in said court, to wit:

MARTHA GROVES & WILLIAM J. GROVES
*vs.*
THOMAS A. POGUE, Administrator, with the Will Annexed, of the Estate of Rosetta Rhea, Deceased. } No. 3276.

Came the plaintiffs, by Korbly and Ford, their attorneys, and the defendant comes in his own proper person and waives the issuing and service of process herein, and, entering his appearance, files his answer to the petition as follows, to wit:

In the Jefferson Circuit Court, January Term, 1886.

212 MARTHA GROVES and WILLIAM J. GROVES
*vs.*
THOMAS A. POGUE, Administrator, with the Will Annexed, of Rosetta Rhea, Deceased.

Comes now Thomas A. Pogue, said administrator, in his own proper person, and for answer to the petition of plaintiffs says he admits the allegations to be true, and consents the order therein prayed for may be granted by the court upon their filing the bond required by law.

THOMAS A. POGUE,
*Administrator, with the Will Annexed, of Rosetta Rhea, Deceased.*

And thereupon the petition and answer are by agreement of the parties submitted to the court, and the court, being sufficiently advised, sustains and grants the plaintiffs' petition.

It is therefore ordered by the court that the plaintiffs, Martha Groves and William J. Groves, be put in possession of said note and mortgage made by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to Rosetta Rhea, dated January 1st, 1868, for $8,970.12, reduced by partial payments to $4,873.60, with 8% interest from March 5th, 1884, act of mortgage passed before Edward de Generes, notary public, Avoyelles parish, in the State of Louisiana, upon a large tract of land known as the "Leinster plantation," being item No. 43 in the inventory on file in the clerk's office; and the defendant, Thomas A. Pogue, administrator of the estate of said Rosetta Rhea, deceased, with the will annexed, is ordered to execute to the said petitioners a good and sufficient assignment of
213 said note and mortgage of all his right, title, and interest therein as such administrator and take their receipts for the same, as an advancement upon their residuary legacies under the will of said Rosetta Rhea, deceased, provided that said petitioners shall first file in the clerk's office of this court their bond in the penal sum of five thousand dollars, payable to said administrator

(def't), and upon this condition, that they will severally return to said administrator said note and mortgage or the proceeds thereof or such portion thereof, with interest, whenever necessary for the payment of debts, legacies, or claims, or to equalize the shares and legacies among those entitled thereto, and said bond, when so filed, shall become a part of the record herein and shall be approved by the clerk.

And afterwards, to wit, on the 30th day of January, 1886, the same being the 24th judicial day of said January term, 1886, of said Jefferson circuit court, and before the hon. judge aforesaid, the following further proceedings were had in said cause and entered of record in said court, to wit:

MARTHA GROVES and WILLIAM J. GROVES
vs.
THOMAS A. POGUE, Administrator, with the Will Annexed, of the Estate of Rosetta Rhea, Deceased. } No 3276.

Come now said Martha Groves and William J. Groves and file their bond herein according to the order of this court herotofore made in this cause; which bond is now approved in open court and reads as follows, to wit:

214 Know all men by these presents that Martha Groves and William J. Groves, residuary legatees of Rosetta Rhea, deceased, late of Jefferson county, in the State of Indiana, are jointly and severally held and firmly bound unto Thomas A. Pogue, administrator of the estate of Rosetta Rhea, deceased, with the will annexed, in the penal sum of five thousand dollars. Witness our hands and seals this 18th day of January, A. D. 1886. The condition of this obligation is such that whereas the bounden obligors are the residuary legatees of said Rosetta Rhea, deceased, and petitioned the circuit court of Jefferson county, in the State of Indiana, to put them in possession of a certain note and mortgage made by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to Rosetta Rhea, dated January 1st, 1868, for $8,970.12, reduced by partial payments to $4,873.60, with 8 % interest from March 5th, 1884, more fully described in the said petition and order of the court; and whereas the said petition was granted by said court at the January term thereof, in the year 1886, upon the said petitioners filing bond: Now, if the said Martha Groves and William J. Groves, or either of them, shall return to said Thomas A. Pogue, administrator, said note and mortgage or the proceeds thereof, or any portion thereof, with interest, whenever necessary for the payment of debts, legacies, or claims, or to equalize the shares and legacies among those entitled thereto, or costs or expenses of administration, upon his demand, then and in that case this obligation shall be null and void; otherwise in full force and virtue in law.

WM. J. GROVES. [SEAL.]
MARTHA GROVES. [SEAL.]

215 Approved in open court January 30th, 1886.

WILL. H. MATTHEWS,
*Clerk Jeff. Circuit Court.*

STATE OF INDIANA, } ss:
*Jefferson County,* }

I, Will. H. Matthews, clerk of the circuit court within and for the county of Jefferson, in the State of Indiana, and legal custodian of the files and records of said court, hereby certify the annexed and foregoing to be a true and correct copy of all the papers, proceedings, order, and judgment of said court in the above-entitled cause, and of the bond filed by said plaintiffs, as all the same appears from the files and records of said court now legally in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Madison, this 2nd day of February, A. D. 1886.

[SEAL.] (Signed) WILL. H. MATTHEWS,
*Clerk of the Jefferson Circuit Court.*

STATE OF INDIANA, } ss:
*Jefferson County,* }

I, William T. Friedley, sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, do hereby certify that Will. H. Matthews, whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing
216 and sealing said certificate the clerk of the circuit court of Jefferson county, in the State of Indiana, and keeper of the records, files, and seals thereof, duly elected and qualified to office, and that full faith and credit should be given to all his official acts as such clerk, and that his said signature is genuine, and said attestation is in due form of law and by the proper officer.

Given under my hand, at the city of Madison, in said Jefferson county, this 2nd day of February, 1886.

WILLIAM T. FRIEDLEY,
*Judge of the Jefferson Circuit Court.*

STATE OF INDIANA, } ss:
*Jefferson County,* }

I, Will. H. Matthews, clerk of the circuit court within and for said Jefferson county, hereby certify that the Honorable William T. Friedley, whose name is subscribed to the annexed and foregoing certificate, was at the time of signing the same and now is the sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, duly elected, commissioned, and qualified as such judge, and that his said signature is genuine.

In witness whereof I have hereto signed my name and affixed the seal of said court this 2nd day of February, A. D. 1886.

WILL. H. MATTHEWS,
[SEAL.] *Clerk of the Jefferson Circuit Court.*

EXHIBIT "B,"

217 Being a copy of the last will of Rosetta Rhea and the letters of administration, with the will annexed, on the estate of Rosetta Rhea, marked Def'd'ts' No. 2.

*Last Will and Testament of Rosetta Rhea.*

Know all men by these presents, that I, Rosetta Rhea, of the city of Madison, county of Jefferson and State of Indiana, being of sound mind and memory, but in feeble bodily health, do make and publish this my last will and testament, hereby revoking all former wills by me at any time made:

Item 1st.

I direct that my executors hereinafter named, pay all my just debts and funeral expenses as soon after my decease as it may be properly done.

Item 2.

I will and bequeath to the Second Presbyterian Church of Madison, Indiana, of which I am a member, the sum of one hundred dollars, to be expended in repairs of the house in which the congregation now worships God.

Item 3rd.

I will and direct that my executors hereinafter named, or in case they do not qualify then the administrator with this will annexed, shall sell all of my real and personal property, except choses in action, which shall be collected without delay, at public auction to the highest bidder on such terms as may seem to them most advisable. And no petition in court or order of court shall be necessary for such sale, and they shall and may execute to the purchasers or pur-
218 chaser, a deed or deeds of conveyance, and shall take notes and mortgages for the deferred payments in case of sales on credit.

Item 4th.

I will and bequeath to my brother William J. Groves the gold watch which belonged to my husband and which he used to carry, and I request him to keep it as a remembrance. I also will and bequeath to my sister Martha Groves, the gold watch and chain which I wear, together with any of my jewelry and clothing that she may select.

Item 5th.

After all the rest of my property shall have been converted into money by my executors, I will and bequeath to Mrs. Jane Hitz, wife of John Hitz, the sum of two hundred dollars ($200) to be paid to her by my executors. Also will and bequeath to Rosetta R. Groves,

my namesake, daughter of my brother William Groves, the sum of one thousand dollars ($1,000) to be paid to her by my executors hereinafter named.

Item 6th.

After the above-named bequests have been paid, I will and bequeath all the rest and residue of my estate to be equally divided between my brother William J. Groves and my sister Martha Groves. It is my will that my sister Martha Groves invest her portion of this bequest, or a sufficient portion thereof in a suitable home in the city of Cincinnati, Ohio, near her relatives and that she reside there.

I do hereby appoint my friends Thomas Ware of Cincinnati, Ohio, and Charles C. Cornett of the city of Madison, my executors
219 of this will, and I request them to act as such; and in case they no not both qualify, then the other shall act, and in case both fail to qualify then the court shall appoint an administrator with this will annexed and he shall have all of the powers of said executors.

In witness whereof, I have hereunto subscribed my name this 19 day of May, A. D. 1883.

ROSETTA RHEA.

The foregoing instrument, written on two sheets of paper, was by the said Rosetta Rhea signed and published as her last will and testament in our presence, and we, in her presence and at her request and in each other's presence, signed our names hereto as the subscribing witnesses to said will.

C. A. KORBLY.
MRS. J. W. BRISHEN.
BROOKE McTYRE.

STATE OF INDIANA, } ss:
*Jefferson County,* }

I, W. M. Jackman, clerk of the circuit court of said county, certify the foregoing to be a true and complete copy of the last will and testament of Rosetta Rhea, late of said county, deceased, as the same appears from the original will now on file in my office.

Witness my hand and seal this 14 day of June, 1883.

[SEAL.] W. M. JACKMAN, *Clerk*,
Per WILL. H. MATTHEWS, *Dep't.*

220 *Letters of Administration.*

I, W. M. Jackman, clerk of the circuit court for the county of Jefferson, in the State of Indiana, do hereby certify that administration, with the will annexed, of the personal property of Rosetta Rhea, late of Jefferson county, deceased, who died testate, is granted to Thomas A. Pogue, and the said Thomas A. Pogue, having duly qualified and given bond as such administrator, is duly authorized

to take upon himself the administration of such estate, according to law, and said will, a certified copy of which is hereto annexed.

Witness my hand and the seal of said court this 23 day of June, A. D. 1883.

[SEAL.] W. M. JACKMAN, *Clerk*,
Per WILL. H. MATTHEWS, *Dep't.*

*Notice to Executors and Administrators.*

Executors and administrators are required by law to file inventories and appraisements of estates and, in case of sale, a sale bill of personal estate of decedent within ninety days after their said appointment. They are also required to make report and final settlement within one year from the date of their said appointment. They are liable, in case of failing to execute the duties of their trust, to removal, costs of citation, a suit for damages for amount of money of the estate not paid over, with interest and ten per centum damages thereon. Citations will issue against executors and
221 administrators in all cases for any failure to execute the duties of their trust.

STATE OF INDIANA, )
*Jefferson County*, ) ss:

I, Will. H. Matthews, clerk of the circuit court within and for the county of Jefferson, in the State of Indiana, and legal custodian of the files and records of said court, hereby certify the annexed and foregoing to be a true and correct copy of the last will and testament of Rosetta Rhea, late of said county, deceased, and also of the letters of administration, with the will annexed, on the estate of said Rosetta Rhea issued to Thomas A. Pogue, as all of the same appears of record in said court, and of which records I am the legal custodian.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Madison, this 26th day of December, A. D. 1885.

[SEAL.] WILL. H. MATTHEWS,
*Clerk of the Jefferson Circuit Court.*

STATE OF INDIANA, )
*Jefferson County*, ) ss:

I, William T. Friedley, sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, do hereby certify that Will. H. Matthews, whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing said certificate the clerk of the circuit court of Jeffer-
222 son county, in the State of Indiana, and keeper of the records, files, and seals thereof, duly elected and qualified to office, and that full faith and credit should be given to all his official acts as such clerk, and that his said signature is genuine and said attestation is in due form of law and by the proper officer.

Given under my hand, at the city of Madison, in said Jefferson county, this 26th day of December, 1885.

WILLIAM T. FRIEDLEY,
*Judge of the Jefferson Circuit Court.*

STATE OF INDIANA, }
*Jefferson County,* } ss:

I, Will. H. Matthews, clerk of the circuit court within and for said Jefferson county, hereby certify that the Honorable William T. Friedley, whose name is subscribed to the annexed and foregoing certificate, was at the time of signing the same and now is the sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, duly elected, commissioned, and qualified as such judge, and that his said signature is genuine.

In witness whereof I have hereto signed my name and affixed the seal of said court this 26th day of December, A. D. 1885.

[SEAL.] WILL. H. MATTHEWS,
*Clerk of the Jefferson Circuit Court.*

EXHIBIT "C,"

223 Being petition of Rosetta Rhea for distribution of estate of John Rhea, finding, order, and judgment of court thereon, and a bond filed therein, and proceedings in common pleas court of Jefferson county, Indiana, marked Def'd'ts' No. 3.

STATE OF INDIANA, }
*County of Jefferson,* } ss:

In the Common Pleas Court of Jefferson County, in the State of Indiana, and Before Hon. Scott Carter, Sole Judge of said Court.

In the Matter of the Estate of JOHN RHEA, Deceased; ROSETTA RHEA, Adm'x.

Be it remembered that on the 22nd day of December, 1868, said Rosetta Rhea filed in said court the following petition, to wit:

STATE OF INDIANA, }
*Jefferson County,* } ss:

Jefferson County Common Pleas Court, December Term, 1868.

In the Matter of the Estate of JOHN RHEA, Deceased; ROSETTA RHEA, Administratrix.

224 The petition of Rosetta Rhea respectfully shows to this court that she has made a final settlement of said estate and has paid all debts of the decedent, and that she is the widow of John Rhea, deceased, and at the time of the decease of said John Rhea he was a resident of the county of Jefferson and State of Indiana and was domiciled in said county at said time and had been such resi-

dent and so domiciled in said county for a period of more than ten years next previous to his decease, and further says that said John Rhea died intestate and that said decedent Rhea at his decease left neither father nor mother him surviving, but both his father and mother had departed this life before the decease of said John Rhea; that there was no child or children born of the marriage of said John Rhea and your petitioner, and that he left neither child or children nor the descendents of any child or children surviving him; that said decedent did not own any real estate, except a house and lot in the city of Madison, at his decease, and that he left the following assets and personal property at his decease:

| | |
|---|---|
| Household and kitchen furniture in the city of Madison of the value of | $1,240 50 |
| Cash in city of Madison | 600 00 |
| Bank stock in ditto | 6,000 00 |

Also certain personal property on Leinster plantation, Avoyelles parish, in the State of Louisiana, which was sold by your petitioner and a note taken therefor, secured by mortgage on real estated, dated January 1st, 1868, payable two years after date, drawn by F. B. Randolph, C. M. Randolph, and Dora Lambeth for $8,979.12.

That since the settlement of said estate there remains a bal-
225 ance in the hands of your petitioner, as administratrix of said estate, of $16,133.22 for distribution, including said mortgage note. Your petitioner further shows that she is the sole heir of the said John Rhea, deceased, according to section 26 of the act of the General Assembly of Indiana, entitled an "Act regulating descents and the apportionments of estates," approved May 14th, 1852.

Wherefore your petitioner now here makes appearance and asks a distribution to her, as sole heir, of the assets of said estate (upon her filing a bond as required by section forty of the probate act found at page 525 of G. of H., Statutes of Indiana), and asks that said note, which is yet uncollected, be decreed to be her own property, and that she be authorized to collect the same in her own name, and for all other or further relief that may be proper in the premises.

HARRINGTON & KORBLEY,
*Att'ys for Petitioner.*

STATE OF INDIANA, } ss:
*County of Jefferson,* }

Rosetta Rhea, the petitioner, being duly sworn, on oath deposes and says that the allegations of fact in the foregoing petition are true in substance and in fact.

ROSETTA RHEA.

Subscribed and sworn to in open court Dec. 24th, 1868.

JAMES J. SERING, *Clerk.*

And afterwards, to wit, on the 28th day of December, 1868, the same being the 11th judicial day of the December term,
226 1868, of the common pleas court of said Jefferson county, and before Hon. Scott Carter, sole judge of said court, the following further proceedings were had in said matter and entered of record in said court, to wit:

*Petition of Rosetta Rhea for Distribution.*

In the Matter of the Estate of JOHN RHEA, Deceased; ROSETTA RHEA, Administratrix.

Now comes Rosetta Rhea, in her own proper person and by Harrington & Korbly, her attorneys, and Isabella Carson, sister of said decedent, also comes by Jeremiah Sullivan, Esq., her attorney; and, this matter is submitted to the court for hearing and judgment, and on motion of said petitioner and consent of said Isabella Carson, it is ordered by the court that the evidence in this case be taken down in writing and spread at large upon the record as a part of the record in this case. Thereupon the petitioner, Rosetta Rhea, Arthur Orr, John Coates, William Wells, and Robert McKim, lawful witnesses, were called, and severally lawfully sworn to testify to the truth, the whole truth, and nothing but the truth in relation to the matter under consideration; and thereupon the said ROSETTA RHEA testified as follows, to wit:

My name is Rosetta Rhea. I was the wife of John Rhea. We had been married about twenty-five years at the time of his death. We were married at Cincinnati, Ohio, on the 25th October, 1842. Mr. John Rhea died Oct. 18th, 1867, at Leinster *parish*, Avoyelles parish, in the State of Louisiana. At the time of his death his residence or domicil was at Madison, in the county of Jefferson
227 and State of Indiana, where he kept house and where his family resided. His residence had been at said Madison for twenty years preceding his death. He did not leave any will at his decease. No children were ever born to us—that is to me and said John Rhea. The father and mother of said John Rhea had both departed this life before his death, in Ireland, in the county of Tyrone. His mother, Nancy Rhea, died in the year 1844 or 1846; his father, Samuel Rhea, died in the year 1860 or 1861. I was on a visit with my said husband, John Rhea, to his old home in Ireland in the year 1863, and visited the church-yard near Beragh, parish of Clogherny, in the county of Tyrone, Ireland, and saw the graves of the said father and mother of said John Rhea, and saw the tombstones upon said graves, and read the inscriptions upon the same, which recorded their names, ages, and time of death. We aslo examined the church register in which the fact and time of their decease was recorded. At the death of said John Rhea he left surviving him your deponent, Rosetta Rhea, his widow; Isabella Carson, formerly Rhea, widow of William Carson, deceased, his sister, who resides in the county of Jefferson and State of Indiana, and Mar-

garet King, formerly Rhea, his sister, wife of George King, who resides about 8 miles from the town of Beragh, in the parish of Clogheny, in the county of Tyrone, Ireland. John Rhea left no brother or other sister that I knew of. He had some brothers and sisters who died before his death, to wit, Ann Cosby, wife of Charles Cosby, who died in 1853 or 1854, at Jefferson county, Indiana, leaving no children; Andrew Rhea, a brother, who died in 1864 or 1865 at Jefferson county, Indiana, leaving a widow, Martha Rhea;
228 he left no children or the decendents of any children; William Rhea, a brother, who died at Beragh, parish Clogherny, county Tyrone, Ireland, before the death of said John Rhea and shortly after our marriage. I forget the year. He died unmarried. I think that John Rhea, my deceased husband, left neither grandfather or grandmother, paternal or maternal, him surviving. John Rhea, my deceased husband, had no former wife; our marriage was his first marriage.

Cross-examined by Isabella Carson's att'y, Judge JEREMIAH SULLIVAN:

My husband made a will before we went to Ireland in 1863. When we came back Mr. John Rhea, my husband, told me that he had burned it. I found no will of his since his death. He never told me that he had or intended to have provided in a will for Isabella Carson. I never saw the will or any will of his. It was soon after we returned from Ireland that he told me that he had destroyed the will. He never told me after he had told me that he had destroyed that will that he had made another will.

Re-examined by the petitioner's counsel:

When my husband went to Avoyelles parish, Louisiana, he told me that he had placed all his private papers at the National Branch Bank of Madison. After his death I went to the said bank and got his papers; they were sealed up in a envelope. Mr. Arthur Orr, tailor and clothier, of Madison, Indiana, and Mr. James Ryan, clerk and merchant, residing now at Rockport, in Spencer county, Indiana, were present and saw the paper- opened. When the papers were opened in the presence of said witnesses no will or codicil of a will
229 was found among the said papers. My husband told me on our trip to Ireland in 1863, during a storm, that he had made a will providing that if both he and I were lost that my sister, Martha Grooves, would be provided for. He after- told me that in case of his death I would be well provided for; that no one could come in between me and his property.

ARTHUR ORR, being sworn, testified:

My business is clothier and tailor; I am 56 years old; I reside at Madison, in the county of Jefferson and State of Indiana. I was acquainted with John Rhea, the said decedent. I first formed his acquaintance about 20 years ago. The petitioner, Rosetta Rhea, and

said John Rhea lived together as husband and wife ever since I knew him, and were received as such in this community. I was well acquainted with said John Rhea and his wife. I came from the same place in Ireland that he came from, and I knew him in his boyhood and was intimate with him. I never knew of any children being born unto Mr. and Mrs. Rhea. If there ever had been any children born unto them I could not but have known it from my intimacy with the family. I knew that said John Rhea and Rosetta, his wife, took a trip to Ireland in 1863. After he returned I inquired of him about his friends and relations in Ireland, and in the conversation he told me his father and mother were both dead. John Rhea resided in Madison, county of Jefferson, State of Indiana, at the time of his death and for twenty years preceding the same. At the time of his death he kept a house in said city.

JOHN COATES thereupon testified as follows:

I am a merchant; 41 years old; reside at Madison, Indiana. I knew John Rhea, deceased. I became acquainted with him,
230 in 1851, at Madison. I became acquainted with the petitioner, Rosetta Rhea, at the same time; she was his wife. Said Rhea resided at Madison, Indiana, from the time I became acquainted with him until the time of his death. He died in Louisiana, on Leinster plantation. I had often heard said John Rhea say that his father and mother were both dead. There were never any children born to said John Rhea and Rosetta, his wife, to my knowledge. Mr. John Rhea often told me that they had no children born unto them. His place of business was just opposite to mine and I saw him frequently and was intimately acquainted with him.

Cross-examined by the counsel of Isabella Carson:

John Rhea gave me a sealed paper said to contain a will in 1863, shortly before he went on his tour to Ireland. He said it contained his will. I locked it up and kept it till his return, and a few weeks after his return from Ireland I gave it back to him. I know nothing further what became of it and never heard him say what became of it.

Re-examined by petitioner's counsel:

He gave me the paper containing said will and said to keep it till he returned from Ireland. When he came home I gave it back to him.

WM. WELLS thereupon testified as follows: I am a hardware merchant. I am 52 years old; reside at Madison, Indiana. I had known Mr. Rhea for 18 or 20 years; was more particularly acquainted with him for the last 12 years. He resided all that time at Madison, Indiana, where he was domiciled at the time of his death. The petitioner, Rosetta Rhea, and said John Rhea lived all that time together as husband and wife and were received as

231 such in this community. To the best of my knowledge, he died childless. He often told me that he had nobody but himself and wife to take care of.

ROBERT MCKIM thereupon testified as follows:

I am a coal merchant; aged 52; reside at Madison, Indiana. I was very well acquainted with Mr. John Rhea for about 20 years preceding his death. I knew Rosetta Rhea. She was his wife. I think there were no children born of the marriage. He was domiciled at Madison, Indiana, at the time of his death. I went with him and his wife to Ireland in 1863. I was at Beragh, parish of Clogheney, county of Tyrone, Ireland, and from general reputation there and from what Mr. Rhea told me I learned that his father and mother were both dead. John Rhea must have been over 50 years when he died. He left one sister, Mrs. Margaret King, in Ireland and another, Mrs. Isabella Carson, widow, here in this county.

And this was all the testimony.

SCOTT CARTER, *Judge:*

And the court, having heard all the testimony adduced, the argument of counsel, and being sufficiently advised, finds that said John Rhea, late of Madison, Indiana, departed this life at Leinster plantation, Avoyelles parish, in the State of Louisiana, on the 18th day of October, 1867, intestate; that he left surviving him the petitioner, Rosetta Rhea, his widow; that he and said Rosetta Rhea were lawfully married at Cincinnati on the 25th day of October, 1842; that said John Rhea died childless—that is, he left neither child, children, nor the descendants of any child or children; that the father and mother of said John Rhea died in Ireland before the time of the death of said John Rhea; that said John Rhea
232 left two sisters surviving him—Margaret King, wife of George, residing now in Ireland, and Isabella Carson, wife of —— Carson, now residing in Jefferson county, in the State of Indiana; but the court finds that said sisters are not heirs-at-law of said decedent according to the laws of Indiana. The court further finds that the domicil of said John Rhea at the time of his death and for 20 years previous had been at the city of Madison, county of Jefferson, and State of Indiana.

It is therefore considered and adjudged by the court, according to section 26 of the act of the General Assembly of the State of Indiana, entitled "An act regulating descents and the apportionment of estates," approved May 14th, 1852, which sections read as follows, to wit:

"If a husband or wife die intestate leaving no child and no father or mother, the whole of his or her property, real and personal, shall go to the survivor;" and according to the construction of said statute by the supreme court of the State of Indiana in the case of Shaw *vs.* Breese, reported in the 12th volume of Indiana Reports on page 392, as follows:

PERKINS, *J.*: "Complaint for partition.

Partition adjudged.—The facts are that Moses Breese, on the 18th day of May, 1842, conveyed by a deed, with usual covenants, in consideration of love and affection, to his daughter, Caroline Breese, *of* the tract of land of which partition was asked. In 1855 said Caroline intermarried with George Shaw. In 1857 she died intestate, leaving no children nor father nor mother. Her brothers and sisters living and the descendants of those deceased now claim
233 the whole or some part of said tract of land under the statute of the State regulating descents. The husband also claims under the same statute. The statute provides (Sec. 261 R. S., p. 251) "that if a husband or wife die intestate, leaving no child and no father or mother, the whole of his or her property, real and personal, shall go to the survivor." It appears from the statement of facts above that this case exactly fills the conditions of the section of the statute quoted, under which the whole property goes to the surviving wife or husband; but it is contended that this section — to be modified by construction; that it was intended by the legislature that it should be taken in connection with other sections of the statute of descents. We do not deny the rule of construction, but see nothing in the statute that will change the effect of sec. 26 upon the application of the rule. The statute of descents varies to meet cases; upon one set of facts the property descends in one mode, upon set in another. These different cases are met and provided for by different sections. From sec. 1 to sec. 6, inclusive, the provisions may be regarded as enacted upon the hypothesis that there is no surviving wife or husband. Section 7 may have been enacted upon the hypothesis that though there were no children, yet there might be a father or mother to whom the property might descend, and as against them, in the state of facts assumed in the section, the property should revert to the donor. In the case met by the 26th section there is neither children nor father nor mother, but there is a surviving husband or wife. In all such cases the whole property, after payment of debts, goes to the survivor. If there was a
234 doubt as to the construction we have put upon the sections we would be compelled to throw that doubt in favor of the surviving husband or wife, as section 15 of the statute enacts that "every rule of descent or distribution prescribed by this act shall be subject to the provisions made in behalf of the surviving husband or wife of the descendent."

*Per curiam:* The judgment is reversed with costs. Let the petition be dismissed.

Which statute is now in force and unrepealed; that the said Rosetta Rhea is the sole heir of said John Rhea, deceased, of all of his real and personal property, and entitled to the prayer in her petition herein; and it is further ordered by the court that the clerk of the court distribute to the said Rosetta Rhea all the personal property of said John Rhea, deceased, within the jurisdiction of the State of Indiana, and that the said Rosetta Rhea

is entitled and ordered to collect the note mentioned in her petition on the persons in the State of Louisiana who purchased decedent's property in said State which was left by him on Leinster plantation, in Avoyelles, parish in her own name and for her own sole use, provided that she file at the present term of this court a good and sufficient bond in the penal sum of $16,000, with freehold surety, conditioned as the law directs. The statute under which this order is made and said bond required is as follows: Sections 137, 138, & 139 and 140 of the act of the General Assembly of the State of Indiana, entitled "An act providing *to* the settlement of decedents' estates, prescribing the rights, liabilities, and duties of officers connected with the management thereof and the heirs thereto
235 and certain forms to be used in such settlement," approved June 17th, 1852.

SEC. 137. When the deceased shall have died intestate the surplus remaining after the payment of all debts and legacies shall be distributed to the legal heirs thereof according to the law of descent in force in this State, unless such decedent was an inhabitant of another State, in which case such surplus shall be distributed according to the law of that State.

SEC. 138. At the term when final settlement of an estate is made, if there be any surplus and if the heirs, distributees or legatees shall be present in person, by attorney or guardian, and give their assent notice need not be given; but if the heirs, distributees or legatees are not present, no notice shall be required than that provided for in section one hundred and eighteen of the above-recited act; and the court shall proceed to make distribution as provided in section one hundred and thirty-nine.

SEC. 139. At the next term after such publication if any of the heirs shall appear and prove their heirship to the satisfaction of the court, after having examined the heirs applying and any other persons deemed proper, under oath, touching the number of decedent's heirs, and their degrees of relationship to him, such court shall order the clerk to distribute such surplus among the heirs applying, reserving the shares of those who have not proven heirship until they appear in court in person or by guardian or attorney and establish their heirship, when the court shall order payment to be made to them, such guardian or attorney.

SEC. 140. In making such order of distribution the court may require of the distributees respectively before receiving their share to file in the office of such clerk a bond with sufficient
236 surety payable to the State of Indiana conditioned for the refunding of their rateable proportions of the estate to any heir who may afterwards appear; but no heir shall bring suit on such bond unless he was a minor, insane or a non-resident of this State at the time of such distribution.

And thereupon comes said Rosetta Rhea and files her bond, with John Coates, Arthur Orr, and William Wells, three freehold sureties, in the penal sum of sixteen thousand dollars; which bond reads as follows, to wit:

Know all men by these presents that we, Rosetta Rhea, principal, and John Coates, Arthur Orr, and William Wells, all of the county of Jefferson and State of Indiana, sureties, are held and firmly bound unto the State of Indiana in the penal sum of sixteen thousand dollars. Sealed with our seals and dated the 24th day of December, 1868. The condition of the above obligation is this: That whereas the above-bounden Rosetta Rhea, at the December term of the common pleas court, in the year 1868, made final settlement of the estate of John Rhea, deceased, and reported that there was the sum of sixteen thousand four hundred and thirty-three and $\frac{22}{100}$ dollars, personal property, &c., in her hands for distribution, and thereupon said Rosetta Rhea filed her petition under oath in said court, alleging that she was the sole heir of said decedent, John Rhea, and that he died intestate, without issue, and leaving neither father or mother surviving him; and whereas the said court examined the said Rosetta Rhea and divers other witnesses as to said heirship and decided
that said Rosetta Rhea was the sole heir of said John Rhea,
237 deceased, and that she was entitled to receive the said sexteen
thousand four hundred and thirty-three and $\frac{22}{100}$ dollars of the assets of said estate, all of which more fully appears of record in said court:

Now, if the said Rosetta Rhea will refund her rateable portion of said estate to any heir or legatee (in case there should be a will of decedent found and properly and legally established) who may hereafter appear, then this obligation shall be null and void; otherwise to be and remain in full force and effect.

ROSETTA RHEA. [SEAL.]
JOHN COATES. [SEAL.]
ARTHUR ORR. [SEAL.]
WILLIAM WELLS. [SEAL.]

And said — being seen by the court and sureties examined, it is in all things approved.

STATE OF INDIANA, }
*Jefferson County*, } ss:

I, William H. Matthews, clerk of the circuit court within and for the county of Jefferson, in the State of Indiana, and legal custodian of the files and records of said court and also of the files and records of the common pleas court of said county, hereby certify the annexed and foregoing to be a true and correct copy of the petition of Rosetta Rhea for distribution of the estate of John Rhea, deceased, and of the finding and order and judgment of said common pleas court thereon, and also of the bond filed in said court by said Rosetta Rhea, as heir and distributee of said estate, as all the same appears upon
the records of said common pleas court and the files thereof,
238 now legally in my possession.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Madison, this 7th day of December, A. D. 1885.

[SEAL.] WILLIAM H. MATTHEWS,
*Clerk of Jefferson Circuit Court.*

STATE OF INDIANA, }
*Jefferson County,* } ss:

I, William T. Friedley, sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, do hereby certify that William H. Matthews, whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing said certificate the clerk of the circuit court of Jefferson county, in the State of Indiana, and keeper of the records, files, and seal thereof, duly elected and qualified to office, and that he is also legal custodian of the files and records of the common pleas court of said county, and that full faith and credit should be given to all his official acts as such clerk, and that his said signature is genuine and said attestation in due form of law and by the proper officer.

Given under my hand, at the city of Madison, in said Jefferson county, this 7th day of December, 1885.

WILLIAM T. FRIEDLEY,
*Judge of the Jefferson Circuit Court.*

STATE OF INDIANA, }
*Jefferson County,* } ss:

239 I, William H. Matthews, clerk of the circuit court within and for said Jefferson county, hereby certify that the Honorable William T. Friedley, whose name is subscribed to the annexed and foregoing certificate, was at the time of signing the same and now is the sole presiding judge of the circuit court of Jefferson county, in the State of Indiana, duly elected, commissioned, and qualified as such judge, and that his said signature is genuine.

In witness whereof I have hereto signed my name and affixed the seal of said court this 7th day of December, A. D. 1885.

[SEAL.] WILLIAM H. MATTHEWS,
*Clerk of the Jefferson Circuit Court.*

EXHIBIT "D,"

Being the note sought to be collected herein, and the endorsements thereon, marked Def'd'ts' No. 4.

See page 205 of this transcript.

EXHIBIT "E,"

Being act before Edward Generes, January, 1868, and the certificate of registry thereof, marked Def'd'ts' No. 5.

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

Be it known that this day before me, Edward de Générés, notary public in and for the said State and parish, duly commis-
240 sioned and qualified—

Personally came Mistress Fanny B. Lambeth, wife of Christopher M. Randolph, by him authorized, and Miss Dora Lambeth,

all of this parish, who severally declared that they are indebted unto Mrs. Rosetta Groves, widow of the late John Rhea, of Madison county, State of Indiana, in the sum of eight thousand nine hundred and seventy & $\frac{12}{100}$ dollars, being balance due by them for the purchase price of certain movable property, mules, cane, &c., &c., which belonged to said Rhea at the time of his death and which was upon the Leinster plantation (owned by said Mrs. Randolph and Miss Lambeth), and the ownership of which described movable property descended to said widow Rhea as the sole heir-at-law of her said husband, in default of children and father and mother, according to the laws of the State of Indiana, where said Rhea had his domicile at and for some time preceding his death.

That the price agreed to be paid for said movable property was the sum of thirteen thousand four hundred and seventy and $\frac{12}{100}$ dollars ..... 13,470 12

From which is to be deducted the amount due by said Rhea for rent of said Leinster plantation for the year 1867 and for the securing whereof they have the privilege of lessor (all others for laborers' wages, &c., being extinguished) upon all said property, four thousand five hundred dollars ..... 4,500

Leaving the said balance of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars ..... $8,970 12

241 due by them, which they promise to pay to said Mrs. Rhea in two years from 1st of January, 1868, and to represent said sum they have made their certain promissory note, dated this day, payable at the Citizens' Bank of Louisiana, in the city of New Orleans, on the first day of January, eighteen hundred and seventy, to the order of said Mrs. Rosetta Rhea for said sum, and bearing interest at the rate of eight per cent. per annum from date until paid, and which note is not to be negotiable except upon compliance by said Mrs. Rhea with the conditions hereinafter stipulated, and which, after being by me, notary, paraphed to identify it with this act, is delivered to Mr. Jerome B. Vanhorn, herein representing said Mrs. Rhea as her attorney-in-fact by virtue of a power of attorney hereto annexed, herein represented by substitution of Joseph O. Correjolles, as per act of procuration hereto annexed, and here present, who acknowledges receipt thereof.

It is hereby stipulated between the parties that said Mrs. Rhea is to procure a judicial recognition of her right to the estate of her said late husband as his sole heir and an order putting her in possession as such of all his estate or furnish conclusive proof to the satisfaction of said Mrs. Randolph and Miss Lambeth of her being his sole heir or extinguish opposing claims, if such there should be, and that until said condition be complied with by Mrs. Rhea that payment of said note is not to be demanded nor the title to said note transferred until such compliance, and that any transfer or negotiation thereof shall only be valid after the performance of such conditions.

In order to secure unto said Mrs. Rhea the payment of
242 said debt and said notes evidencing the same the said Mrs. Randolph and Miss Lambeth do hereby mortgage to and in favor of said Mrs. Rhea, herein represented, as above stated, by her attorney-in-fact, said Joseph O. Correjolles, here present and accepting:

1°. That certain plantation or tract of land known as the "Leinster plantation," situated on Bayou Huffpower and Bayou Clair, in this said parish of Avoyelles, containing two thousand four hundred and five acres, more or less, being composed of the following subdivisions of land according to the surveys of the United States Land Office Department, viz:

Lots Nos. one and three of section thirteen.

East half of southeast quarter and east half of southwest quarter of section fourteen.

West half of southeast quarter of section fifteen.

Lots Nos. one and six of section twenty-two.

Lower half of lot No. three of section twenty-two.

West half of northeast quarter of section twenty-two.

Lots Nos. one, two, three, and four of section twenty-three.

Lot No. one of section twenty-four.

Lot No. four of section twenty-six.

Lots Nos. one, six, and seven of section twenty-seven.

West half of section thirty-four.

Southeast quarter of section thirty-four.

West half of northeast quarter of section thirty-four.

East half of northeast quarter of section thirty-four.

West half of northwest quarter of section thirty-five.

West half of southwest quarter of section thirty-five.

243 All of said lots or parcels of land being situated in township one south, of range three east.

2°. A certain tract of land adjoining the said Leinster plantation, known as the "Falkland tract," containing five hundred and eighty acres (580).

The land firstly described was purchased from I. K. Elgee by the late Mr. Wm. M. Lambeth in 1844, half of which was afterwards conveyed to Mrs. M. A. Wells, and by act of 22nd of January, 1853, before R. L. Taliaferro, notary public in this parish, was reconveyed to said Lambeth, by which act the tract secondly described was also conveyed to him, having been purchased by said Mrs. Wells and Mr. Lambeth from Mrs. Derié Tanner by act of 22nd April, 1852, before J. W. Pearce, then notary in said parish of Avoyelles, and all of said lands were inherited by said Mrs. Randolph and said Miss Lambeth as only heirs of their father, the late Wm. M. Lambeth, duly recognized as such and placed in possession by orders rendered by the second district court of New Orleans in the succession of their said father, No. 6286 of the docket.

By reference to the annexed certificate of the recorder of the parish of Avoyelles, it appears that there are no mortgages or encumbrances standing recorded against said property.

The act of procuration of Mrs. Rhea to Jerome B. Vanhorn and

the act of procuration of Jerome B. Vanhorn substituting Joseph O. Corrèjolles have been *ne varietur* of date by me, notary.

And to this act is also annexed, as evidence of the indebtedness averred to bill of purchase of the movable property as above, which — also paraphed *ne varietur* of date.

244 Thus done and passed, at Leinster plantation, in the parish of Avoyelles, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-eight, in presence of Lorenzo Scofield and Ewell Benedict, both competent witnesses, who hereto sign with me, the undersigned notary.

(Original signed) FANNY B. RANDOLPH.
C. M. RANDOLPH.
DORA LAMBETH.
JOSEPH O. CORREJOLLES,
*Att'y-in-Fact.*
(Stamp.) EDOUARD DE GENERES, *Not. Pub.*

Witnesses:
L. SCOFIELD.
EWELL BENEDICT.

*Ne varietur.*

A true copy of the original act passed before me, notary, and of record on my books.

January 1st, 1868.

(Stamp.) EDOUARD DE GENERES, *Not. Pub.*

I do hereby certify that the original whereof this is a true copy has been filed and recorded in my office on the 11th day of January, A. D. 1868.

Given under my hand and seal of office, at Marksville, Avoyelles, this 13th day of January, A. D. 1868.

[SEAL.] L. V. HREMILLION, *Recorder.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

245 I do hereby certify that the original of which the foregoing act is a true copy was filed for reinscription and recorded in my office on March 28th, 1887, in Mortgage Book No. 35, folio 108 *et seq.*

Given under my hand and seal of office, at Marksville, Avoyelles parish, La., on this 29th day of March, A. D. 1887.

[SEAL.] A. J. LAFARGUE,
*Clerk of Court, Avoyelles, La.*

EXHIBIT "F."

Being copy of sheriff's deed to Sentell and certificate of record thereon, marked Def'd'ts' No. 6.

STATE OF LOUISIANA,
*Parish of Avoyelles.*

Whereas I, Leon Gauthier, sheriff of the parish of Avoyelles, by virtue of a writ of *fieri facias*, issued out of the 12th district court in and for the parish of Avoyelles, and to me directed, against the goods and chattels, lands and tenements, rights, and credits of Mrs. Fanny B. Randolph and Ernest Theodore Gennert, defendants at the suit of George Washington Sentell and *als.*, in suit No. 7049, docket of the 12th district court, parish of Avoyelles, State of Louisiana, entitled G. W. Sentell and *als. vs.* Fanny B. Randolph & *als.*, did seize the following property belonging to said Mrs. F. B. Randolph and Ernest Th. Gennert, to wit:

1st. A certain tract or parcel of land, together with the
246 buildings and improvements thereon, and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clear and the public road leading from Holmesvill: to Marksville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart, Stanley, others, and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mills from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Fanny B. Randolph.

2nd. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of —, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven and the north half of southwest quarter of said section twenty-seven, the northwest quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres, and having exposed the same to public sale, according to law, on the first day of March, one thousand eight hundred
247 and eighty-four, for cash, with the benefit of appraisement, the conditions previously advertised and made known to the bidders before offering said property for sale, and also made known that said property is subject to special and general mortgages by exhibiting and reading the certificate of the parish recorder, bearing date March first, 1884, and certifying that said property is encumbered as aforesaid, when, on said conditions, George Washington

Sentell, being the last and highest bidder, became the purchaser thereof for the price and sum of twelve thousand and two dollars, of which the following disposition has been made :

| | |
|---|---|
| Clerk's & recorder's costs | $10 10 |
| Witness costs on writ | 20 40 |
| Guardian's costs | 30 00 |
| Sheriff's costs | 91 90 |
| Printer's costs | 21 00 |
| Parish tax 1880 | 178 50 |
| Interest for 1881 | 12 78 |
| Interest for 1882 | 12 78 |
| Interest for 1883, two months of 1884 | 78 97 |
| Rhea mortgage prior to the Sentell mortgage, as per certificate of the parish recorder | 4,873 00 |
| Interest on same up to date of sale | 1,164 12 |
| Taxes of 1883 | 187 64 |
| Balance paid Sentell & *als.* in suit No. 7049 | 5,320 81 |
| | $12,002 00 |

The amount of six thousand thirty-seven & $\frac{12}{100}$ dollars, being the Rhea mortgage, with interest from March fifth, 1881, was
248 retained in the hands of the purchaser, G. W. Sentell, said mortgage being prior and special. The balance of said bid, being five thousand nine hundred and sixty-four & $\frac{88}{100}$ dollars, was paid to me in cash, receipt whereof is hereby acknowledged.

Now, therefore, know all men by these presents that I, the said sheriff, do, in consideration of the premises and by virtue of the act in such case made and provided, grant, bargain, sell, assign, and set over to the said George W. Sentell, his heirs and assigns, all the above-described property, and all the right, title, interest, or demand which the said F. B. Randolph and E. Th. Genert on the first day of March, 1884, or at any time since had in or to the said property or any part thereof; to hold the same to the said heirs and assigns forever.

In testimony whereof I have hereunto placed my official signature this first day of March, A. D. 1884.

Avoyelles, this first day of March, 1884.

LEON GAUTHIER, *Sheriff.*

Signed in presence of—
W. HALL.
C. CANNON.

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to have been duly recorded, with accompanying certificate of mortgage, on Sheriff Sale Book "D," folio 265 *et seq.*, of my office.

Given under my hand and seal of office, at Marksville, Avoyelles, this 22 day of March, A. D. 1884.

[SEAL.] G. H. COUVILLON, *Dy Clerk.*

249 STATE OF LOUISIANA, )
*Parish of Avoyelles.* )

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office in Alien Book X X, folio 108, filed March 22d, 1884.

Given under my hand and seal of office, at Marksville, Avoyelles, La., this 5th day of January, A. D. 1886.

[SEAL.] T. J. ARMITAGE,
*Dep'ty Clerk.*

EXHIBIT "G,"

Being certificate of mortgage, marked Def'd'ts' No. 7.

STATE OF LOUISIANA, )
*Parish of Avoyelles.* )

I do hereby certify that I have found inscribed upon the records of my office the following mortgages in the name of Mrs. Fanny B. Randolph and affecting the following-described property, to wit:

1°. A certain tract or parcel of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereto belonging or appertaining, situated in the parish of Avoyelles, in this State, designated as the Leinster plantation, containing about twenty-seven hundred acres, on Bayou Huffpower and Bayou Clear, and bounded on the west by Bayou Clear and
250 the public road leading from Holmesville, on the south by lands of Brice and Frith, on the east by the road leading from Holmesville to Evergreen and by lands of one Ewell, and on the north by lands of Stewart and Stanley and others and Bayou Rouge, excepting, however, about seven hundred acres lying in sections thirty-four and thirty-five, and also four hundred acres lying east of the public road leading past Stanley's mill from Holmesville to Marksville, which excepted portions do not belong to said Mrs. Randolph.

2°. An undivided half part, share, and interest of, in, and to all and singular all those tracts or parcels of land situated in said parish of Avoyelles, on Bayou Jack and Bayou Choupique, in township one south, range five east, designated and described as the north half of section number twenty-seven, the north half of the southwest quarter of the said section twenty-seven, the northwest quarter of section thirty, the southeast quarter of section thirty-two, the west half of the southwest quarter of section twenty-eight, the southwest quarter of the northeast quarter of section twenty-eight, and the undivided half of the southwest quarter of section seventeen, containing in the aggregate nine hundred and thirty acres.

1st. A special mortgage consented to by Mrs. Fanny B. Lambeth, wife of Christopher M. Randolph, and Miss Dora Lambeth on the first day of January, 1868, in favor of Mrs. Rosetta Groves, widow of the late John Rhea, for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, evidenced by a certain promissory note drawn by the said Mrs. Randolph and Miss Lambeth on the said first

day of January, 1868, and payable at the Citizens' Bank of
251 Louisiana, in the city of New Orleans, on the first day of January, 1870, to the order of Mrs. Rhea, for said sum and bearing interest at the rate of eight per cent. per annum from date until paid, and not negotiable except upon compliance by said Mrs. Rhea with the conditions stipulated in said act of mortgage, which said mortgage has been reduced to the sum of four thousand eight hundred and seventy-three dollars, affecting the following-described property, to wit:

1°. That certain plantation or tract of land known as the Leinster plantation, situated on Bayou Huffpower and Bayou Clear, in this parish of Avoyelles, containing two thousand four hundred and five acres, more or less, being composed of the following subdivisions of land according to the surveys of the United States Land Office Department: Lots Nos. one and three of section thirteen east half of southeast quarter and east half of southwest quarter of section fourteen, west half of southeast quarter of section fifteen.

Lots Nos. one and six of section twenty-two, lower half of lot No. three of section twenty-two, west half of northeast quarter of section twenty-two, lots Nos. one, two, three, and four of section twenty-three.

Lot No. one of section twenty-four.

Lot No. four of section twenty-six.

Lots Nos. one, six, and seven of section twenty-seven.

West half of section thirty-four.

Southeast quarter of section thirty-four.

West half of northeast quarter of section thirty-four.

252 East half of northeast quarter of section thirty-four.

West half of northwest quarter of section thirty-five.

East half of southwest quarter of section thirty-five.

All of said lots or parcels of land being situated in township one south of range three east.

2°. A certain tract of land adjoining the said Leinster plantation, known as the Falkland tract, containing five hundred and eighty acres (580), recorded January 11th, 1868, and reinscribed August 25th, 1877.

2d. A special mortgage, consented to by Mrs. Fanny B. Randolph on the 15th day of May, 1875, in favor of Johnson & Goodrich, for the sum of eight thousand dollars, evidenced by three several promissory notes, for the sum of two thousand six hundred and sixty-six & $.66\frac{2}{3}$ dollars each, made payable respectively on the first day of January of each of the years 1876, 1877, and 1878, and bearing interest at the rate of eight per cent. per annum from the fifth day of May, 1875, until paid, said notes being paraphed "*ne varietur*" by Andrew Hero, Jr., notary public.

And the said mortgagor also bound himself to pay all lawyer's or attorney's fees that may become due in the event of the non-payment of the said notes or of any part thereof, said lawyer's and attorney's fees being fixed at five per cent. on the amount sued for, and also to pay all premium or premiums as shall be paid by the said mortgagee or any holder or holders of the aforesaid notes in caus-

ing insurance to be effected, on default of said mortgagor causing them to be insured, affecting the property herein firstly described. Recorded May 20th, 1875.

253 3d. A general mortgage resulting from the filing of the tax-roll of the parish of Avoyelles in my office, wherein it appears that the said Mrs. Fanny B. Randolph is indebted unto the parish of Avoyelles in the sum of three hundred and twenty & $\frac{90}{100}$ dollars, being the amount of her parish taxes and interest for the year 1880. Recorded Sept. 25th, 1880.

4°. A general mortgage resulting from the inscription of the tax-rolls of the parish of Avoyelles, wherein it appears that the said Mrs. Randolph is indebted unto the State of Louisiana and parish of Avoyelles in the sum of eleven & $\frac{3}{100}$ dollars, being the amount of her State and parish taxes and interest for the year 1882. Recorded August 10th, 1882.

5°. A general mortgage resulting from the filing in my office of the tax-rolls in and for the parish of Avoyelles, wherein it appears that the said Mrs. Fanny B. Randolph and Ernest Th. Gennert are indebted unto the State of Louisiana and parish of Avoyelles in the sum of two hundred and twenty-four & $\frac{}{100}$ dollars, being the amount of their State & parish taxes and interest for the year 1882. Recorded August 10th, 1882.

6°. A general mortgage resulting from the filing in my office of the tax-rolls for the parish of Avoyelles, wherein it appears that the said Mrs. Fanny B. Randolph is indebted unto the State of Louisiana in the sum of sixteen & $\frac{96}{100}$ dollars, being the amount of her State and parish taxes and interest for the year 1883. Recorded August 7th, 1883.

7th. A general mortgage resulting from the filing in my office of the tax-rolls in and for the parish of Avoyelles for the year 1883, wherein it appears that the said Mrs. Fanny B. Randolph

254 and the said Et. Theodore Gennert are indebted unto the State of Louisiana and parish of Avoyelles in the sum of one hundred and seventy-nine & $\frac{}{100}$ dollars, being the amount of their State and parish taxes and interest for the year 1883. Recorded August 7th, 1883.

Given under my hand and seal of office, at Marksville, Avoyelles, this 1st day of March, A. D. 1884.

[SEAL.] L. V. GREMILLION, *Clerk.*

STATE OF LOUISIANA, }
*Parish of Avoyelles.* }

I do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office.

Given under my hand and seal of office, at Marksville, Avoyelles, La., this 5th day of January, A. D. 1886.

[SEAL.] T. J. ARMITAGE,
*Deputy Clerk.*

EXHIBIT "H,"

Being act before N. B. Trist, notary, partial payment of subrogation and extension of time, Def'd'ts' No. 8.

STATE OF LOUISIANA,
*Parish of Orleans, City of New Orleans.*

Be it known that on this twenty-eighth day of April, in the
255 year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor Olivier, Jr., of this city, herein acting in the capacity of attorney-in-fact of Mrs. Rosetta Rhea, of the city of Madison, county of Jefferson, State of Indiana, by virtue of a power of attorney dated March 22d, 1873, hereto annexed for reference and made part hereof; Edward Nalle, herein acting for and representing the commercial firm of Nalle and Cammack, of this city, of which he is a member, and Theodore O. Stark, herein acting in the capacity of attorney-in-fact of his wife, Mrs. Dora Lambeth, and of Mrs. Fanny B. Lambeth, widow of the late Christopher M. Randolph, all of the parish of Avoyelles, by virtue of a power of attorney dated April 23d, 1873, hereto annexed for reference and made part hereof.

Which appearers declared that whereas the said Mrs. Rosetta Rhea is the holder and owner of a certain promissory note drawn by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to the order of the said Mrs. Rosetta Rhea for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, dated January 1st,
256 1868, payable two years after date, at the Citizens' Bank of Louisiana, bearing interest, at the rate of eight per cent. per annum, from date until paid, not negotiable, and paraphed "*ne varietur*" by Edward de Generes, notary public, under date of January 1st, 1868, for identification, with an act of mortgage of same date from the said Mrs. Randolph and Miss Dora Lambeth in favor of Mrs. Rosetta Rhea, by which the payment of said notes is secured by mortgage on the "Leinster" plantation, situated on Bayou Huffpower and Bayou Clear, in the parish of Avoyelles, in this State, containing two thousand four hundred and five acres, more or less, and being more fully described in said act of mortgage, to which reference is herein specially made.

And whereas the said firm of Nalle and Cammack have agreed to pay, with subrogation, the sum of two thousand dollars on account of said note and have paid the same in the presence of the parties and of the undersigned notary unto the said Victor Olivier, Jr., acting as aforesaid for Mrs. Rosetta Rhea, receiving the said sum for her and granting acquittance for the same:

Now, therefore, the said Victor Olivier, Jr., in his capacity aforesaid, does by these presents subrogate the said Nalle and Cammack

to the extent of the said sum of two thousand dollars, thus paid by them, in and to all the rights, title, interest, and privileges of the said Mrs. Rosetta Rhea in and to the said note of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, hereinabove more fully described and, to the same extent in and to the aforesaid mortgage of January first, 1868, before Edward de Generes, notary public, securing the payment of said note on the Leinster plantation,
257 therein more fully described; the said rights, title, privileges, and mortgage to be enjoyed and exercised by the said Nalle and Cammack in the same manner and to the same extent as they might have been by the said Mrs. Rosetta Rhea herself.

Which said partial payment with subrogation has been duly endorsed on the said note by the undersigned notary under date of to-day for identification with this act.

It is further agreed and understood by the parties to this act that in case it becomes necessary to foreclose the mortgage aforesaid in order to pay the above-described note, the balance due to Mrs. Rosetta Rhea on said note shall be paid first and in full from the proceeds of the sale of said Leinster plantation in preference to the claim of Nalle and Cammack arising from the payment and subrogation aforesaid.

And the said Theodore O. Stark, in the names of his said constituents, does hereby agree and consent to the division of the aforesaid debt of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars represented by the mortgage note afore described.

And the said T. O. Stark and Victor Olivier, Jr., further declared that after a careful computation of interest and deduction of partial payments made at different times to Mrs. Rosetta Rhea by the drawers of said note there remains due on the same at this date the sum of nine thousand five hundred and seventy-seven $\frac{34}{100}$, reduced to seven thousand five hundred and seventy-seven $\frac{34}{100}$ dollars by the payment of two thousand dollars presently made by Nalle and Cammack as aforesaid.

It is further agreed and understood that the payment of the balance of seven thousand five hundred and seveny-seven
258 $\frac{34}{100}$ dollars, due as aforesaid on said note to Mrs. Rosetta Rhea, is hereby extended to the first of March next, 1874, when the drawers of the same shall have the privilege of extending the payment of the same another year from that date upon the payment of interest up to date, the payment of an installment of two thousand five hundred dollars, and the payment of one year's interest upon the balance, in advance, at the rate of eight per centum per annum; and the same privilege is hereby granted to the said drawers to extend the payment of the balance due from year to year for two years upon the payment of a like installment of twenty-five hundred dollars and interest in advance, all without novation or prejudice to the mortgage aforesaid, the whole debt, however, to become due and exigible, even if extended according to the above agreement, should Nalle and Cammack, their heirs or assigns, on or after the first day of March, eighteen hundred and seventy-four, foreclose the said mortgage to enforce the payment of

the said sum of two thousand dollars, to which they are herein subrogated.

And the said Nalle and Cammack hereby extend the payment of the said sum of two thousand dollars due to them on said note to the first day of March, eighteen hundred and seventy-four.

Whereas in said act of mortgage passed before Generes, notary public, on the first of January, 1868, it was stipulated between the parties that the said Mrs. Rosetta Rhea was to procure a judicial recognition of her right to the estate of her said husband as his sole heir or furnish conclusive proof, to the satisfaction of the mortgagors, of her being his sole heir; and whereas a transcript
259 of the proceedings in the common pleas court of Jefferson county, State of Indiana, in the matter of the estate of John Rhea, deceased, has been exhibited to the said mortgagers and to their agent, Theodore O. Stark, he hereby declares in the name of his said constituents that they are satisfied from the said record that Mrs. Rosetta Rhea is the sole heir of her husband, under the laws of Indiana, and that she is the rightful owner of the said promissory note and alone entitled to receive payment of the same.

Thus done and passed in my office, at New Orleans aforesaid, the day, month, and year first above written, in the presence of Martin Gordon, Jr., and Joseph M. Kennedy, Jr., witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the appearers and me, the said notary, after the reading of these presents.

(Original signed) VICTOR OLIVIER, JR.
NALLE AND CAMMACK,
By EDW'D NALLE.
T. O. STARK.
N. B. TRIST, *Not. Pub.*

MARTIN GORDON, JR.
J. M. KENNEDY, JR.

I hereby certify the above and foregoing to be a true copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, June 3d, 1886.

(Signed) N. B. TRIST,
[SEAL.] *Not. Pub.*

260 EXHIBIT "I."

Being act before N. B. Trist, notary, of May 5th, 1877, partial release of mortgage, marked Def'd'ts' No. 9.

STATE OF LOUISIANA, }
*Parish of Orleans, City of New Orleans.* }

Be it known that on this fifth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred

and first, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor Olivier, Jr., of this city, herein acting in the name and behalf and as the duly authorized agent and attorney-in-fact of Mrs. Rosetta Rhea, of Jefferson county and State of Indiana, by virtue of a power of attorney executed on the 28th day of April, 1875, acknowledged on the same day before Edw'd T. Dickey, a notary public within and for said county and State, and annexed to an act of partial release of Rosetta Rhea in favor of Geo. W. Billington, passed before Edgar Grima, a notary in this city, on the eighth of June, 1875—

Who declared as follows: The said Mrs. Rosetta Rhea is the holder and owner of a certain promissory note, drawn by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to the order of
261 the said Mrs. Rosetta Rhea, for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, dated January 1st, 1868, payable two years after date, at the Citizens' Bank of Louisiana, bearing interest at the rate of eight per cent. per annum from date until paid, not negotiable, and paraphed *ne varietur* by Edward de Generes, notary public, under date of January 21st, 1868, for identification with an act of mortgage of same date from the said Mrs. Randolph and Miss Dora Lambeth in favor of Mrs. Rhea, by which the payment of said note is secured by mortgage on "Leinster plantation," situated on the Bayous Huffpower and Clair, in the parish of Avoyelles, in this State, and more fully described in said act of mortgage, to which reference is specially made.

That the following-described *price* of land, forming a portion of said Leinster plantation, was recently sold to Jesse J. Toone, viz., a tract of land containing twenty-three $\frac{68}{100}$ acres, sold to Jesse J. Toone by J. B. Spencer, who purchased in 1872 from Mrs. Stark, and being a portion of the northwest quarter of the northwest quarter of section thirty-four, township one south, range three east. Said tract is marked "Spencer" on the plat of said Leinster plantation, hereto annexed for reference, and further designated thereon by the letter A.

Now, therefore, in consideration of the payment to him made, as the agent of said Mrs. Rhea, of the sum of eight hundred dollars, the price of said tract of land, the said Victor Olivier, Jr., in his capacity aforesaid, does hereby release and authorize the erasure of the aforesaid mortgage in so far as it bears on said tract of twenty-three $\frac{68}{100}$ acres and empower the recorder of mortgages for
262 said parish of Avoyelles to erase and cancel the same from the records of his office in so far as it bears on said tract of twenty-three $\frac{68}{100}$ acres.

Which partial release I, notary, have mentioned on said note, which was produced to me for that purpose and which I have paraphed for identification herewith.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Benjamin

Olivier and John G. Wilson, competent witnesses, who sign these presents with the appearer and me, notary, after reading thereof.

(Original signed) VICTOR OLIVIER, JR.
N. B. TRIST, *Not. Pub.*

BENJ. OLIVIER.
J. G. WILSON.

I hereby certify the above and foregoing to be a true and correct copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, June 3rd, 1886.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

EXHIBIT "J,"

Being power of attorney, Theodore Stark, by Fanny B. Lambeth, widow of C. M. Randolph, and Dora Lambeth, wife of T. O. Stark, marked Def'd'ts' No. 10.

STATE OF LOUISIANA, )
*Parish of Avoyelles.* )

Be it known that we, Fanny B. Lambeth, widow of Christopher M. Randolph, and Dora Lambeth, wife of Theodore O. Stark, all of the parish of Avoyelles, have nominated and appointed, and do by these presents hereby nominate, constitute, and appoint, said Theodore O. Stark our true and lawful attorney-in-fact, for us and in our names to settle and establish the payments made and
263 amounts still due by them on a mortgage note of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, $8,970.12, dated January 1st, 1868, held by Mrs. Rosetta Rhea to endorse on said note the amount paid thereon; to interrupt prescription; to consent to any subrogation in favor of any person or persons or commercial firm who may pay a portion of their said indebtedness on said note, and thus divide their said indebtedness, and to appear and sign, in their name, any agreement, document, or notarial act carrying out said subrogation, with any clauses or conditions which said attorney may, in his discretion, deem fit; to enter into said arrangements with said Mrs. Rhea, her agents or attorneys, to obtain an extension of time for the payment of the balance due on said promissory note, said extension of time to be granted and accepted upon such terms and conditions as to our said attorney may deem fit; to sign a notarial act for that purpose and to acknowledge therein, in their name, that they recognize said Mrs. Rosetta Rhea as the rightful owner of said note in her quality of sole heir of her deceased husband, the late John Rhea, of Madison Co., Indiana, recognized as such by the court of Jefferson Co., Indiana, in the matter of the estate of John Rhea, deceased, and alone entitled to claim payment of said note, with full power of substitution, and generally to do everything necessary to carry out the premises as fully as if done

by us in person, hereby ratifying all and whatsoever our said attorney may lawfully do or cause to be done by virtue hereof.

Witness our hands this twenty-third day of April, 1873.

(Signed) FANNY B. RANDOLPH.
DORA L. STARK.

Witness:
A. C. TOWNSEND.
(Signed) HENRY ISLIKER.

264 Personally came and appeared before me one Henry Isliker, one of the subscribed witnesses to the foregoing instrument of writing, who made oath that he saw Mrs. Fanny Randolph and Mrs. Dora L. Stark sign the same on the day and date therein written.

(Signed) HENRY ISLIKER.

Sworn to and subscribed before me this 23d day of April, A. D. 1873.

(Signed) A. DUCOSE.
*Justice of the Peace.*

I hereby certify the above and foregoing to be a true and correct copy of the original power of attorney, annexed for reference to and made part of an act of payment, with subrogation, between Mrs. Rhea, Mrs. Stark, and Mrs. Randolph, passed before me on the 28 day of April, 1873.

As witness my official seal and signature at New Orleans, this 29 day of December, 1886.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

265 EXHIBIT "K,"

Being act before N. B. Trist, notary, of July 2, 1879, partial payment with subrogation, marked Def'dts' No. 11.

STATE OF LOUISIANA, )
*Parish of Orleans, City of New Orleans.* )

Be it known that on this second day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor Olivier, Jr., of this city, herein acting for and in the name and behalf and as the duly authorized agent and attorney-in-fact of Mrs. Rosetta Rhea, of the city of Madison, State of Indiana, by virtue of a power of attorney dated March 22d, 1873, annexed for reference to an act passed before the undersigned notary on the 28th day of April, 1873, and—

George W. Sentell, also of this city, herein acting and stipulating for the commercial firm of G. W. Sentell and Co., domiciled in this city, and of which he is a member.

Which appearers declared as follows:

Whereas the said Mrs. Rosetta Rhea is the holder and owner of a certain promissory note drawn by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to the order of said Mrs. Rosetta Rhea,

266 for the sum of eight thousand nine hundred and seventy $\frac{13}{100}$ dollars, dated January 1st, 1868, payable two years after date at the Citizens' Bank of Louisiana, with eight per cent. interest per annum from date until paid, and paraphed *ne varietur* by Edward de Generes, notary public, under date of Jan'y 1st, 1868, for identification with an act of mortgage of same date, by which the payment of said note is secured by mortgage on the "Leinster plantation," situated on Bayou Huffpower and Bayou Clair, in the parish of Avoyelles, in this State;

And whereas the said G. W. Sentell and Co. have agreed to pay, with subrogation, the sum of twelve hundred and thirty-nine dollars on said note, seven hundred and forty dollars of which on the principal and four hundred and ninety-nine dollars for interest, at 8 % per annum, from March 5th, 1879, to March 5th, 1880;

Now, therefore, in consideration of the payment to him made at the execution of these presents by said G. W. Sentell and Co. of said sum of twelve hundred and thirty-nine dollars, the said Victor Olivier, Jr., in his capacity aforesaid, does by these presents subrogate the said G. W. Sentell and Co. to the extent of said sum of twelve hundred and thirty-nine dollars in and to all the rights, title, and interest of said Mrs. Rhea in and to the said note, and to the same extent in the mortgage securing the same as aforesaid, the said rights, title, mortgage, and privileges to be enjoyed and exercised by the said G. W. Sentell and Co. in the same manner and to the same extent as they could have been by the said Mrs. Rhea herself—

It being further agreed and understood by and between the parties hereto that on a distribution of the proceeds of said

267 mortgaged property the balance due to Mrs. Rhea on said promissory note shall be paid in full in principal, interest, and costs before any portion thereof shall be applied to the payment of the claim of G. W. Sentell and Co. arising from the present payment and subrogation.

And to these presents personally came and intervened Theodore O. Stark, herein acting in the capacity of attorney-in-fact of his wife, Mrs. Dora Lambeth, and of Mrs. Fanny B. Lambeth, widow of the late Christopher M. Randolph, all of the parish of Avoyelles, by virtue of a power of attorney dated April 23d, 1873, and annexed for reference to said act passed in this office on the 28th of April, 1873.

And the said Stark, in the names of his said constituents, does hereby agree and consent to the division of the debt represented by said promissory note in the manner herein effected.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written in the presence of Robert Smith

and Leon L. Labatt, competent witnesses, residing in this city, with the appearers and me, notary, after reading of the whole.

(Original signed) VICTOR OLIVIER, Jr.
T. O. STARK.
G. W. SENTELL.
N. B. TRIST, *Not. Pub.*

ROBERT SMITH.
L. L. LABATT.

I hereby certify the above to be a true and correct copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, June 3d, 1886.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

268 EXHIBIT "L."

Being act before N. B. Trist, notary, April 28, 1880, partial payment with subrogation, marked Def'd'ts' No. 12.

STATE OF LOUISIANA, }
*Parish of Orleans, City of New Orleans,* }

Be it known that on this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fourth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor Olivier, Jr., of this city, herein acting for and in the name and behalf and as the duly authorized agent and attorney-in-fact of Mrs. Rosetta Rhea, of the city of Madison, State of Indiana, by virtue of a power of attorney dated March 22d, 1873, annexed for reference to an act passed before the undersigned notary on the 28th day of April, 1873, and George W. Sentell, also of this city.

Which appearers declared as follows:

Whereas the said Mrs. Rosetta Rhea is the holder and owner of a certain promissory note drawn by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to the order of said Mrs. Rosetta Rhea for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, dated January 1st, 1868, payable two years after date at
269 the Citizens' Bank of Louisiana, with eight per cent. interest per annum from date until paid, and paraphed *ne varietur* by Edward de Generes, notary public, under date of January 1st, 1868, for identification with an act of mortgage of same date, by which the payment of said note is secured by mortgage on the "Leinster plantation," situated on Bayous Huffpower and Clair, in the parish of Avoyelles, in this State;

And whereas the said G. W. Sentell has agreed to pay, with subrogation, the sum of one thousand dollars on said note, six hundred

and ten $\frac{15}{100}$ dollars of which on the principal and three hundred and eighty-nine $\frac{85}{100}$ dollars for interest, at 8 % per annum, from March 5th, 1880, to March 5th, 1881:

Now, therefore, in consideration of the payment to him made at the execution of these presents by said G. W. Sentell of said sum of one thousand dollars, the said Victor Olivier, Jr., in his capacity aforesaid, does by these presents subrogate the said G. W. Sentell to the extent and amount of one thousand dollars in and to all the rights, title, and interest of said Mrs. Rhea in and to the said note, and to the same extent and amount in the mortgage securing the same as aforesaid, the said rights, title, mortgage, and privileges to be enjoyed and exercised by the said G. W. Sentell in the same manner and to the same extent as they might or could have been by the said Mrs. Rhea herself, it being agreed and understood, however, that on a distribution of the proceeds of said mortgaged property the balance due to said Mrs. Rhea on said promissory note shall be paid in full in principal, interest, and costs before
270 any portion thereof shall be applied to the payment of the claim of G. W. Sentell arising from the present payment and subrogation.

And to these presents personally came and intervened Theodore O. Stark, herein acting in the capacity of attorney-in-fact of his wife, Mrs. Dora Lambeth, and of Mrs. Fanny B. Lambeth, widow of the late Christopher M. Randolph, all of the parish of Avoyelles, in this State, by virtue of a power of attorney dated April 23d, 1873, and annexed for reference to said act passed in this office on the 28th of April, 1873.

And the said Stark, for and in the names of his said constituents, does hereby agree and consent to the division of the debt represented and evidenced by said promissory note for the purpose and in the manner herein effected.

The said note was produced to me, notary, and, after being paraphed by me for identification herewith, was returned to said Olivier, as he acknowledges.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written in the presence of Paul Carambat and John A. Blaffer, competent witnesses, residing in this city, who sign these presents with the appearers and me, notary, after reading of the whole.

(Original signed) VICTOR OLIVIER, JR.
T. O. STARK.
G. W. SENTELL.
N. B. TRIST, *Not. Pub.*

J. A. BLAFFER.
PAUL CARAMBAT.

I hereby certify the above and foregoing to be a true and
271 correct copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, June 3, 1886.

[SEAL.] (Signed) N. B TRIST, *Not. Pub.*

EXHIBIT "M."

Being act before N. B. Trist, notary, December 13, 1883, acknowledgment of payment to G. W. Sentell & Co., marked Def'd'ts' No. 13.

STATE OF LOUISIANA,
*Parish of Orleans, City of New Orleans.*

Be it known that on this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared George W. Sentell, of this city, herein acting as the liquidating partner of the firm of G. W. Sentell and Co., which was in existence in 1879, who declared as follows:

Whereas, by an act passed before the undersigned notary on the second day of July, 1879, the said G. W. Sentell and Co.
272 paid the sum of twelve hundred and thirty-nine dollars on a certain promissory note drawn by Fanny B. Randolph and Dora Lambeth to the order of Mrs. Rosetta Rhea for the sum of eight thousand nine hundred and seventy $\frac{12}{100}$ dollars, dated January 1st, 1868, payable two years after date at the Citizens' Bank of Louisiana, with eight per cent. interest per annum from date until paid, and paraphed *ne varietur* by Edward de Generes, notary public, under date of January 1st, 1868, for identification with an act of mortgage of same date, by which the payment of said note is secured by mortgage on the "Leinster plantation," situated on Bayou Huffpower and Bayou Clair, in the parish of Avoyelles, in this State, and more particularly described in said act—

Upon payment of which sum on said note the said G. W. Sentell and Co. were by said act before the undersigned notary duly subrogated by said Mrs. Rosetta Rhea, owner and holder thereof, to her rights, title, mortgage, and privileges therein up to the amount paid.

And said appearer further declared that the said sum of twelve hundred and thirty-nine dollars has been refunded by the makers of said note in principal and interest to the said firm of G. W. Sentell and Co., who acknowledges the receipt of the same and hereby grants acquittance therefor and full discharge thereof.

And said appearer does furthermore in the behalf aforesaid release and authorize the erasure of the mortgage securing said note up to the amount aforesaid, to which said firm of G. W. Sentell and Co. had been subrogated by said act before the undersigned notary.

273 Thus done and passed in my office, at New Orleans, the day, month, and year first above written in the presence of Leonard K. Barber, Jr., and Lionel R. Garcia, competent witnesses,

residing in this city, who hereunto sign their names with the appearers and me, notary, after reading of the whole.

(Original signed) G. W. SENTELL.
N. B. TRIST, *Not. Pub.*

L. K. BARBER, JR.
L. R. GARCIA.

I hereby certify the above and foregoing to be a true and correct copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, June 3d, 1886.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

EXHIBIT "N,"

Being assignment by Thomas A. Pogue, administrator, to Martha and William J. Groves, marked Def'd'ts' No. 14.

Know all men by these presents that I, Thomas A. Pogue, administrator of the estate of Rosetta Rhea, deceased, with the will annexed, late of the county of Jefferson and State of Indiana, in consideration of one dollar to me in hand paid and by virtue of an order of the Jefferson circuit court (in and for said county and State) entered at the January term thereof, in the year 1886, in a proceeding wherein Martha Groves and William J. Groves were
274 plaintiffs and I was defendant, do hereby assign, transfer, and set over to said Martha Groves and William Groves (the former of Jefferson county, in the State of Indiana, and the latter of Hamilton county, in the State of Ohio), as the residuary legatees of said Rosetta Rhea, deceased, the following-described note and act of mortgage, to wit:

A certain note, made by Fanny B. Randolph, C. M. Randolph, and Dora Lambeth to Rosetta Rhea, dated January 1st, 1868, for $8,970.12 (eight thousand nine hundred and seventy dollars and 12 cents), reduced by partial payments to $4,873.60 (four thousand eight hundred seventy-three and $\frac{60}{100}$ dollars), with 8% interest from March 5, 1884, and act of mortgage to secure the payment of said note passed before Edward de Generes, notary public, Avoyelles parish, in the State of Louisiana, January 1st, 1868, upon a large tract of land in said parish known as the "Leinster plantation."

In witness whereof I have hereunto set my hand this 3rd day of February, A. D. 1886.

THOS. A. POGUE,
*Administrator of the Estate of Rosetta Rhea, Deceased, with the Will Annexed.*

Attest:
JNO. J. ROSS,
S. E. BAKER,
*Witness.*

*Submission.*

275 Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *June* 16*th*, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause, as continued from June 11, 1888, came on this day to be further heard, and was argued by counsel for the respective parties and submitted, when the court took time to consider.

*Order: Question as to Whether Mrs. Randolph Made Certain Payments to be Reargued.*

Extract from Minute Book, November Term, 1888.

NEW ORLEANS, FRIDAY, *December* 28, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

276 In the above case the following was entered:

The court desires reargument as to the question whether Mrs. Randolph has, according to the testimony, paid half of the joint note, with interest, and as to the effect of such payment if it has been made.

*Hearing and Submission.*

Extract from the Minute Book, April Term, 1889.

NEW ORLEANS, SATURDAY, *May* 25, 1889.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GEO. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause having been set down for reargument as to the question whether Mrs. Randolph has, according to the testimony, paid half of the joint note, with interest, and as to the effect of such payment if it has been made, came on this day to be heard—present, E. M.

Hudson, for complainant; W. S. Benedict, for Martha Groves; Merrick & Merrick, for Mrs. Randolph—and was argued by counsel for Martha Groves and for Mrs. Randolph and submitted, when the court took the same under advisement.

277

Order: Appointment of H. J. Carter special master to state the account showing how much is due the defendant, Mrs. Randolph, and what has been paid by her, &c.

Extract from the Minute Book, April Term, 1889.

NEW ORLEANS, FRIDAY, *June* 14, 1889.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GEORGE W. SENTELL
*vs.*
MARTHA GROVES & *als.* } No. 11376.

In this cause, in order that a proper decree may hereafter be entered, the court being of opinion that when the respondent, Mrs. Randolph, executed the mortgage she was a married woman; that the debt for which the mortgage was given was under our law a community debt, but that she became *femme sole* by the death of her husband, she many times ratified her act in executing the mortgage and must at this late day and after this long acquiescence be deemed and held to have done the same with requisite knowledge; and being further of the opinion that the obligation into which she entered was the joint obligation of the respondent, Mrs. Randolph, and Mrs. Stark, of which each owed a moiety, and that there is by law an imputation of the payments which the obligators have severally made to the extinguishment of the moiety of the debt which they respectively owe, and in order to ascertain how much is still due and owing from the respondent, Mrs. Randolph, it is ordered that the matter be referred to Henry J. Carter, who is made special master herein to make up and state the account showing how much was due as the moiety of the defendant, Mrs. Randolph, and how much has been paid by her, and to carry out this order he is hereby authorized upon due notice to take additional evidence, if any shall be required.

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*Report of Special Master. Filed June* 21, 1889.

Circuit Court of the United States, Eastern District of Louisiana.

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et als.* } In Equity. No. 11376.

To the hon. the circuit court of the United States:

In pursuance of a decretal order of this honorable court dated June 14, 1889, making a reference to me in the above-entitled cause to state the account showing how much under

279

said decree was due as the moiety of the defendant, Mrs. Fanny B. Randolph, and how much has been paid by her on the joint obligation, I respectfully report as follows:

Copy (note herein).

AVOYELLES, LA.,

$8,970.12 LEINSTER PLANTATION, *January 1st*, 1868.

Two years after date we promise to pay to the order of Mistress Rosetta Rhea, at the Citizens' Bank of Louisiana, in the city of New Orleans, eight thousand nine hundred and seventy and $\frac{12}{100}$ dollars, for value received, with interest, at the rate of eight per cent. per annum, from date until paid. Not negotiable.

(Signed) FANNY B. RANDOLPH.
C. M. RANDOLPH.
DORA LAMBETH.

The account should then be stated as follows:

*Statement of Account.*

| | | | |
|---|---|---|---|
| Note of F. B. Randolph, C. M. Randolph, and D. Lambeth, dated Jan. 1st, 1868, and bearing interest at 8 % from date | | | 8,970 12 |
| One-half | | | 4,485 06 |
| Interest to the 15th of April, 1870, 2 years 3½ months | | | 822 26 |
| | | | 8,307 32 |
| 1870. | | | |
| | April 15th, one-half check ($500) | 250 00 | |
| 280 | May 21st, one-half check ($1,000) | 500 00 | |
| | June 20, July 22, do. ($1,500) | 750 00 | |
| | | | 1,500 00 |
| Jan. 11, '71 | | | 3,807 32 |
| Interest to April 28th, 1873, 3 years and 13 days | | | 924 68 |
| | | | 4,732 00 |
| 1873. | | | |
| April 28, one-half of 2,000 thro' Nalle & Cammack | | | 1,000 00 |
| | | | 3,732 00 |
| Interest to July 4, 1876, 3 years 2 mos. and 6 days | | | 950 41 |
| | | | 4,682 41 |
| 1875. | | | |
| April 21st, paid | | 400 00 | |
| 1876. | | | |
| Interest to July 4th, 1876, 1 year & 2 mos. | | 3 73 | |
| July 4th, paid | | 1,500 | |
| | | | 1,903 73 |
| | | | 2,778 68 |

| | | |
|---|---|---|
| Face of note as above, dated January 1, 1868, and bearing 8 % int. from date | | $8,970 12 |
| One-half, or amount due by Mrs. Randolph, with interest | | 4,485 06 |

The evidence of the payments to the credit of Mrs. Randolph comes from her own testimony, pages 2, 3; the testimony of T. O. Stark, pages 17, 18, and 19 and 38 and 39, and that of W. B. McLean, liquidator of the firm of G. W. Sentell & Co., page 30 *et seq.*

| | | |
|---|---|---|
| Page 17, by check to Mrs. Rhea in March or April, 1870 | | $500 00 |
| Page 18, paid draft of Mrs. Rhea, dated April 6, 1870, due May 21st, 1870 | | 1,000 00 |
| 281 Paid draft of Mrs. Rhea due June 20, 1870 | | 1,500 00 |
| " through Nalle & Cammack in April, 1873 | | 2,000 00 |
| Those payments were made out of the joint funds of Mrs. Stark and Mrs. Randolph, amounting to 5,000 | | 5,000 00 |

Q. "One-half to each?
A. "Yes; that is the way it was owned."

Therefore ½ of above for ac. of Mrs. Randolph, 2,500.00.

| | | | |
|---|---|---|---|
| Mrs. Randolph's testimony, page 2 & 3, and Stark's testimony, pages 18 & 19. | By amount paid in | 1875 | 400 00 |
| | Do. | 1876 | 1,500 00 |
| | Do. | 1877 | 780 00 |
| Sentell' testimony, pages 33 & 31. | Do. | 1878 | 428 29 |
| | Do. | 1879 | 501 91 |
| | Do. | 1879 | 646 00 |
| | Do. | 1881 | 389 84 |
| | Do. | 1882 & 1883 on note | 389 84 |
| | | | 2,778 68 |
| Interest to May 5, 1877, 10 mos. | | | 185 23 |
| | | | 2,963 91 |
| 1877. May 5. Paid | | | 780 |
| | | | 2,183 91 |
| Interest to May 5, 1878—1 yr. | | | 174 70 |
| | | | 2,358 61 |
| 282 1878. May 5. Paid | | | 428 29 |
| | | | 1,930 32 |
| Interest to July 2, 1879—1 year and 28 days | | | 166 40 |
| | | | 2,096 72 |

| | | |
|---|---|---|
| 1879. | | |
| July 2nd. Paid by Sentell, one-half of 1,239.32 | | 619 66 |
| | | 1,477 06 |
| Interest to 16th Oct., 1879—3 mos., 14 days | | 34 13 |
| | | 1,511 19 |
| 1879. | | |
| Oct. 16th. Paid by Mrs. Randolph | | 501 91 |
| | | 1,009 28 |
| Interest to Nov. 9, 1881—yrs. and 23 days | | 165 74 |
| | | 1,175 02 |
| 1881. | | |
| Nov. 9th. Nov. 25, '81. Paid through Sentell | | 389 84 |
| | | 785 18 |
| Interest to March 5, 1883—1 yr., 3 mos., 26 days | | 83 06 |
| | | 868 24 |
| 1883. | | |
| May 12. Paid to March 5, 1883 | | 389 84 |
| | | 478 40 |
| Interest from March 5, 1883, to May 29, 1886, date money was deposited in registry of U. S. circuit court | | 123 74 |
| Due by Mrs. Randolph | | 8602 14 |

Respectfully submitted.
(Signed) H. J. CARTER,
*Special Master.*

283 *Application for Rehearing. Filed June 22, 1889.*

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

The petition of Martha Groves *et al.*, plaintiffs in an action at law in this honorable court under the No. — thereof and made defendants in this cause, and on suggesting an order or decree of court and reference to a special master of 14th of June, 1889, and that same is not in accord with the law under which your movers have proceeded or the equities of the cause—

It is ordered that complainants and any other parties interested herein with complainants do show cause, on a day to be fixed by the court—

Why a rehearing of that portion of the opinion of the court herein should not be granted wherein it states or infers that the obligation was joint between the makers of the note.

Why the mortgage which existed as a whole upon the entire property known as the Leinster plantation, the greater portion of which became the property of Mrs. Fanny B. Randolph, should not pay the balance due.

Why the notarial act executed by her under date of 24th of March, 1882, wherein she admitted there was a balance due the heirs of Mrs. Rhea (complainants herein) on 5th of March, 1882, of $4,873,

should not be carried into effect under the terms and con-
284 ditions there stated.

Why, under the proceedings at law of movers, plaintiffs in said lawsuit, wherein it appears that under contract of sale G. W. Sentell, defendant in said cause and complainant herein, agreed to pay as part of his purchase price of the property the sum of $6,037.12, being the "Rhea mortgage," with interest from March 5th, 1881, which amount he retained in his hands, that being prior and special to his own, under which his foreclosure proceedings were had.

Why, under the deed of sale made by the sheriff under the foreclosure proceedings of the said Sentell of said Leinster plantation, in his action against Mrs. Randolph the said sums hereinbefore stated, retained in his hands for account of plaintiffs in action and made defendants in this bill of interpleader, should not be paid to them.

Why the holder of a mortgage note secured by an entire property should be subject to the will or pleasure of the owner or owners of said property in any division thereof, and thereby destroy any rights of mortgage and compel said mortgage creditor to proceed separately against any or all of them when the property was divided between them by acts of partition.

Why the holder and owner of said mortgage note should be compelled to know, contrary to the authentic acts on file of record herein, the sources from which the respective payments on account of the indebtedness were made.

Why, by any combination between the defendants, makers of the obligation on file, or for any other cause it should be neces-
285 sary that any rights of the holder of such obligations should be impaired, or burden of proof thrown upon such obligation holder as to the acts and doings by the active operations of the obligors of said instrument.

Why it becomes necessary to refer this matter to a special master to calculate what part or portion of the payments made on account of an obligation executed more than a generation since should be, as to the owner of the obligation, chargeable as being paid, more or less, by one or the other of the parties when the authentic acts acknowledging payment show same to have been paid by both parties in equal proportions.

Why said authentic acts made at the time in the presence of all parties, many of whom are now dead, should not be regarded.

Why the memory of living parties as against said acts should be regarded at the present time in their own interest as contrary to said authentic acts without proper bill or charge of fraud therein.

| | |
|---|---|
| 1879. | |
| July 2nd. Paid by Sentell, one-half of 1,239.32 | 619 66 |
| | 1,477 06 |
| Interest to 16th Oct., 1879—3 mos., 14 days | 34 13 |
| | 1,511 19 |
| 1879. | |
| Oct. 16th. Paid by Mrs. Randolph | 501 91 |
| | 1,009 28 |
| Interest to Nov. 9, 1881—yrs. and 23 days | 165 74 |
| | 1,175 02 |
| 1881. | |
| Nov. 9th. Nov. 25, '81. Paid through Sentell | 389 84 |
| | 785 18 |
| Interest to March 5, 1883—1 yr., 3 mos., 26 days | 83 06 |
| | 868 24 |
| 1883. | |
| May 12. Paid to March 5, 1883 | 389 84 |
| | 478 40 |
| Interest from March 5, 1883, to May 29, 1886, date money was deposited in registry of U. S. circuit court | 123 74 |
| Due by Mrs. Randolph | $602 14 |

Respectfully submitted.
(Signed) H. J. CARTER,
*Special Master.*

283 *Application for Rehearing. Filed June 22, 1889.*

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

The petition of Martha Groves *et al.*, plaintiffs in an action at law in this honorable court under the No. — thereof and made defendants in this cause, and on suggesting an order or decree of court and reference to a special master of 14th of June, 1889, and that same is not in accord with the law under which your movers have proceeded or the equities of the cause—

It is ordered that complainants and any other parties interested herein with complainants do show cause, on a day to be fixed by the court—

Why a rehearing of that portion of the opinion of the court herein should not be granted wherein it states or infers that the obligation was joint between the makers of the note.

Why the mortgage which existed as a whole upon the entire property known as the Leinster plantation, the greater portion of which became the property of Mrs. Fanny B. Randolph, should not pay the balance due.

Why the notarial act executed by her under date of 24th of March, 1882, wherein she admitted there was a balance due the heirs of Mrs. Rhea (complainants herein) on 5th of March, 1882, of $4,873,

should not be carried into effect under the terms and con-
284 ditions there stated.

Why, under the proceedings at law of movers, plaintiffs in said lawsuit, wherein it appears that under contract of sale G. W. Sentell, defendant in said cause and complainant herein, agreed to pay as part of his purchase price of the property the sum of $6,037.12, being the "Rhea mortgage," with interest from March 5th, 1881, which amount he retained in his hands, that being prior and special to his own, under which his foreclosure proceedings were had.

Why, under the deed of sale made by the sheriff under the foreclosure proceedings of the said Sentell of said Leinster plantation, in his action against Mrs. Randolph the said sums hereinbefore stated, retained in his hands for account of plaintiffs in action and made defendants in this bill of interpleader, should not be paid to them.

Why the holder of a mortgage note secured by an entire property should be subject to the will or pleasure of the owner or owners of said property in any division thereof, and thereby destroy any rights of mortgage and compel said mortgage creditor to proceed separately against any or all of them when the property was divided between them by acts of partition.

Why the holder and owner of said mortgage note should be compelled to know, contrary to the authentic acts on file of record herein, the sources from which the respective payments on account of the indebtedness were made.

Why, by any combination between the defendants, makers of the obligation on file, or for any other cause it should be neces-
285 sary that any rights of the holder of such obligations should be impaired, or burden of proof thrown upon such obligation holder as to the acts and doings by the active operations of the obligors of said instrument.

Why it becomes necessary to refer this matter to a special master to calculate what part or portion of the payments made on account of an obligation executed more than a generation since should be, as to the owner of the obligation, chargeable as being paid, more or less, by one or the other of the parties when the authentic acts acknowledging payment show same to have been paid by both parties in equal proportions.

Why said authentic acts made at the time in the presence of all parties, many of whom are now dead, should not be regarded.

Why the memory of living parties as against said acts should be regarded at the present time in their own interest as contrary to said authentic acts without proper bill or charge of fraud therein.

Why said G. W. Sentell is not absolutely bound to respondent in accordance with his bid, assumption, and deed of sale, inasmuch as it is only upon same and the funds due by him therefrom this honorable court can adjudicate in the premises, no other person having been made party to the lawsuit and the sister of Mrs. Randolph not being made party to the cause in equity.

Why the rights of the sisters as between themselves, one not being present, can be adjudged as against a third person, in whose favor an absolute right exists for the entire obligation, not the portion owned respectively by them now under the acts of partition.

286 Why a mortgage against an entire property cannot be enforced as against the whole or any part or portion thereof if afterwards partitioned.

Wherefore they pray that your honors do reconsider the matters at issue herein and decree that your petitioners in their action at law and as respondents in this controversy be entitled to the rights as claimed in their original petition, with eight per cent. per annum interest, and all their charges herein as against the original defendant, G. W. Sentell.

(Signed) W. S. BENEDICT,
*Sol'r for the Mortgage Cred'rs, the Children of Mrs. R. Rhea.*

*Exception to Report. Filed June 27, 1889.*

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

Now come Martha Groves and William J. Groves, made defendants, and, excepting to the report herein exhibited by Mr. Henry J. Carter, as special master, for objections say:

1st. That an application has been made for a rehearing herein upon the grounds therein stated.

2nd. That the report herein filed does not refer to the fact
287 of the exact amount stated by Mrs. Randolph or by the other witnesses as having been actually paid out of her individual funds, but, on the contrary, the evidence is that the payments were made in moieties by herself and sister.

3d. That the special master did not refer to the authentic acts showing the various payments to have been made equally to Mrs. Randolph and her sister, or by their merchants for their account, and repaid said merchants by them equally.

4th. That no testimony whatsoever was taken in carrying out the order of court so far as your exceptors were advised. They were not notified of the report being prepared, and were solely notified by notice received on the evening of the 21st of June, at 3½ o'clock, that such report had been made and would be exhibited the same day, at 4 o'clock, on one-half hour's notice, and it is therefore requisite and necessary that proper delay be afforded in order to make special examination thereof.

5th. That your exceptors desire to exhibit before the special

master the act of partition of the property, the various acts of payments on account and payments with subrogation, the proceedings of complainant Sentell, with his writ and return and deed of sale with the note originally declared upon, the act of mortgage, its inscription and reinscriptions, and to show thereby that if there was originally a moiety only owing by Mrs. Randolph the same became the entirety of the balance of the obligations at the time the act of partition was passed between the original makers of the obligations.

6th. That no notice whatever was given that any additional evidence was required, or that the matter was being taken into
288 consideration by the special master.

Wherefore they pray these their exceptions be maintained, and that the report be reconsidered, and that they have leave to be heard in connection with the order of court in the premises if maintained by the court under the application for a rehearing.

(Signed) W. S. BENEDICT, *Sol'r.*

*Hearing and Submission.*

Extract from the Minute Book, November Term, 1889.

NEW ORLEANS, SATURDAY, *November* 23, 1889.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause came on this day to be heard upon the report of Henry J. Carter, special master, and the exceptions filed by Martha Groves *et als.*, defendants thereto.

Present: E M. Hudson, for the complainant; Farrar, Jonas & Kruttschnitt, for W. B. McLean; Merrick & Merrick, for Mrs.
289 Fanny B. Randolph; W. S. Benedict, for Martha Groves *et als.*, exceptors, and was argued by the solicitors for the respective parties and submitted, when the court took time to consider.

*Opinion. Rehearing Granted in Part and Mrs. Stark Made a Party Defendant. Filed Jan'y* 14, 1890.

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

I have held the case up so as to be satisfied upon the point made in the brief in support of the application therefor, that the mortgage was *totiem in toto et qualitat parte.* I find the question settled by our supreme court, in Walton *vs.* Ligardi, 15 Louisiana R., 588, and in Erwin *vs.* Green, 5 Robinson's R., 70. These cases held

that when two or more persons unite in a mortgage upon land held by them in indivision to secure the payment of a joint note that each mortgages only his own interest to pay his own proportion of the note. The reasons the court give are that solidarity is never presumed, and that the mortgage, being an incident of the debt, is controlled by it. There has been therefore no error on the part of the court in holding that each mortgaged only for her own portion of a joint debt.

290 As to the other point, that the other joint debtor and mortgager ought to be a party to this accounting, I think the point well taken. Payments were made by one joint debtor on a joint debt. Nothing was done by her to show that she paid except for both debtors. Although equity allows her to insist upon the imputation of her payments to her own portion of the debt, it involves an examination of facts which make the presence of the other debtor as a party proper, though perhaps not strictly necessary. The application for a rehearing is granted to the extent of the matter of the accounting as to what portion of the payments upon the mortgage and note should be imputed to Mrs. Randolph; as to the other matters provided for in the decree it is refused.

Let Mrs. Stark be made a party defendant; let a subpœna and copy of the bill of complaint be served on her, and let her appear and plead on or before the next rule day.

*Order Making Mrs. Stark a Party Defendant. Entered and Filed Jan'y 14, 1890.*

Circuit Court of the United States, Eastern District of Louisiana

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

In this cause, for the reasons assigned in the opinion filed
291 this day, the application for a rehearing is granted to the extent of the matter of the accounting as to what portion of the payments upon the mortgage and note should be imputed to Mrs. Randolph; as to the other matters provided for in the decree it is refused.

Let Mrs. Stark be made a party defendant, let a subpœna and copy of the bill of complaint be served on her, and let her appear and plead on or before the next rule day.

(Signed) EDWARD C. BILLINGS, *Judge.*

New Orleans, Jan'y 14, 1890.

*Appearance of Mrs. Stark.*

Extract from the Chancery Order Book.

MONDAY, *March* 3, 1890.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

Mrs. Dora Starke, wife of Theo. O. Stark, and by her said husband herein joined, authorized, and assisted, through E. Howard McCaleb, her solicitor, hereby enters her appearance to the bill of interpleader in chancery herein filed against her by Geo. W. Sentell, complainant.

292 *Demurrer of Mrs. Stark. Filed March* 6, 1890.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

The demurrer of Dora Lambeth, wife of Theodore O. Stark, and by her said husband herein joined, authorized, and assisted, defendant, to the bill of interpleader of George W. Sentell and the order of court herein rendered and signed on January 14th, 1890, requiring her to be made a party defendant and to appear and plead, etc.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of interpleader to be true in such manner and form as the same are therein set forth and alleged, and for cause of demurrer showeth:

First. That the said complainant hath not in and by said bill made or stated such a cause as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from and against this defendant.

Second. That by the pleadings herein filed it does not appear that this demurrant hath any interest whatsoever in the matters and things at issue herein.

Third. That from said pleadings it does not appear that there was any privity existing between this demurrant and the other
293 defendants and parties to this cause.

Fourth. That from said pleadings it does not appear that the presence of this demurrant is essential or necessary to the final adjudication of all matters and things at issue herein.

Fifth. That this demurrant cannot be compelled to become a party to this controversy by order of court, the same not being requested or demanded by any of the parties in interest herein, nor necessary, as appears by the pleadings filed in this cause.

Wherefore she demands the judgment of this honorable court whether she will be compelled to make any further or other answer

to said bill of interpleader or any of the matters and things therein contained, and prays to be hence dismissed with her reasonable costs in this behalf most unjustly sustained.

(Signed) E. HOWARD McCALEB,
*Solicitor for Defendant.*

I, the undersigned, solicitor for Mrs. Dora Lambeth, wife of Theodore O. Stark, do hereby certify, in my opinion, the foregoing demurrer is well founded in point of law.

(Signed) E. HOWARD McCALEB.

In the Circuit Court of the United States for the Eastern District of Louisiana, 5th Circuit.

G. W. SENTELL
*vs.* No. 11376. In Equity.
MARTHA GROVES *et als.*

294 Before me, the undersigned, notary public in and for the parish of Orleans, city of New Orleans, State of Louisiana, personally appeared Mrs. Dora Lambeth, wife of Theodore O. Stark, of this city, who made oath that the demurrer in this cause prepared by her counsel and to be filed herein for her is not interposed for delay.

(Signed) DORA L. STARK.

Sworn to and subscribed before me this 5 day of Mar., A. D. 1890.

[SEAL.] (Signed) EDWARD J. BLANCHARD,
*Not. Pub.*

*Amended Answer of Mrs. Randolph. Filed March* 15, 1890.

G. W. SENTELL
*vs.* No. 11376. In Chancery.
MARTHA GROVES *et al.*

*Amendment of Answer of the Defendant Fanny B. Randolph.*

Fanny B. Randolph, one of the defendants in this case, by way of further answer, after the making of new parties under the order of the court and by leave thereof, and in order to make her former answer more explicit, and as amendatory thereto, and as a reply to certain matters set up by the other defendants, saith that said

295 Martha Groves and William J. Groves and the representatives of said Mrs. Rosetta Rhea, dec'd, are estopped by their conduct and by their claim of the proceeds of the sale of the said land and real estate sold at the said suit of and under the decree in favor of G. W. Sentell *et al.*, No. 7049 of the docket of the 12th judicial district court of the State of Louisiana in and for the parish of Avoyelles, against this defendant, from contesting this defendant's sole right to said land in virtue of the said partition of January 9th,

1873, marked Exhibit D, and of her right to the proceeds of the sale of her said property sold in a proceeding to which neither the said Groves nor said Mrs. Dora Stark were parties, and which was prosecuted solely against this defendant to subject her said individual property to the payment of the debt of said partnership of G. W. Sentell & Co.

And this defendant, further answering, saith that said Martha Groves and William J. Groves, as representatives of said Rosetta Rhea, have allowed more than five years to elapse since any payment on or acknowledgment thereof has been made by said Mrs. Dora Stark and her husband of said promissory note, nor has any suit or legal or equitable proceedings been instituted against the said Dora Stark and husband and the said supposed mortgage claim of said Groves has been prescribed and barred by laches and by the lapse of five years since any payment or acknowledgment of said Dora Stark and husband and prior to and before the making of said Dora Stark and husband parties to this suit, and the said Martha Groves and others, also defendants, claiming the funds deposited have placed it out of their power to subrogate this defendant
296 to any supposed rights under said supposed promissory note of January 1st, 1868, and supposed mortgage, and they are utterly unable in the event of payment to make any subrogation to this defendant.

This defendant, further answering, saith that the property bought by her said husband with said Miss Dora Lambeth, now Mrs. Stark, of said Rosetta Rhea, dec'd, being the property mentioned in said supposed mortgage of January first, 1868, as the pretended consideration thereof was movable property at the time of said sale by said Rosetta Rhea to him, C. M. Randolph, and formed no part of the said plantation, by destination or otherwise, and that his share of the rent of said plantation due him and Miss Lambeth, he being the head and master of the community and managing this defendant's interest in said plantation as such, was used by him, as he had a right to do, the same belonging to the community, in part payment of said moveables bought by him as aforesaid and actually in his own name, and with which this defendant is sought to be made chargeable and on which she has greatly overpaid any liability she incurred by accepting (if such she did) the succession of her deceased husband as widow in community.

And this defendant further saith that at the death of her said husband the said movable property bought by him during the existence of the community as aforesaid belonged to and formed a part of his succession, and was rightfully taken possession of by the public authorities and inventoried according to law as belonging to his succession and estate and disposed of by the authority, orders, and decrees of the parish court in and for the parish of Avoy-
297 elles, as well as subsequently by the district court for the same parish and State, as shown by the certified copies of the proceedings of said court on file, and the proceeds of said property were applied under the decrees and orders of said judicial authority of the State of Louisiana to the payment of said deceased Randolph's

debts created by him against himself and the community, and said Rhea's debt was placed in said court on said final account as a debt against said Randolph and the community. See Exhibit Mrs. R. No. 11 as a part hereof.

This defendant, further answering, saith that during the existence of said marriage she was not only young and wholly inexperienced in matters of business and had no knowledge of plantation or other business affairs of which her husband took sole charge as master of the community, but she was and continued and still is cut off from the ordinary communication with others by her extremely defective hearing, which makes it impossible to communicate with her except in writing or through an ear-trumpet, with the speaker close to her ear, and the fact that she was not bound by the said supposed promissory note and mortgage was never communicated to her, and she did not know that she was not originally bound by said promissory note and said supposed mortgage signed by her and her husband of January 1st, 1868, but, on the contrary, instead of informing this defendant of the nullity of said instruments by mention of said nullities in the various acts, receipts, powers of attorney, &c., now relied on by the said Martha Groves and others, as set up by them (the said Martha Grove *et al.*), as required by articles No. 2271 and 2272 of the Revised Civil Code, the said documents were prepared
298 by the said last-mentioned defendants or their counsel and agents for her signature in such a form as to keep up and continue in this defendant's mind the false and erroneous belief and deception, instead of mentioning the nullities in the act which were to be cured, each of them; that she was actually and really bound in manner and form as nominally stated in said supposed mortgage and mortgage note that the form of the power of attorney to Theo. Stark, bearing date 23 day of April, A. D. 1873, was artfully prepared by the lawyers or agents of said Rosetta Rhea to keep up the erroneous belief of this defendant and sent to this defendant to sign and the said form of power of attorney, instead of mentioning that it was intended to ratify and cure the nullity in the original supposed act of mortgage and joint mortgage note and to supply the defects in the same, as required by the articles 2271 and 2272 of the Civil Code, and the said supposed power of attorney, did not and could not under the law of Louisiana enable the said Theodore Stark to bind this defendant without consideration to obligations from which she received no benefit; and this defendant, further answering, says that each and every one of said supposed acknowledgments and payments set up by Martha and William J. Groves, in their answer filed in this case on the 31st day of December, 1886, and pleaded as ratifications, were in like manner made without consideration under the same erroneous belief and not voluntary in order to cure nullities in said original mortgage and joint mortgage note, and so this defendant saith that by the laws of Louisiana in such cases made and provided she was and is in no manner bound as a mortgage debtor on said supposed joint mortgage note
299 and mortgage by any of the said supposed acknowledgments and payments set up by the said Groves in their said answer

of the said dates and at the times therein mentioned, but the same are utterly null and void and of no effect and do not bind this defendant, and do not in any manner give the said Groves the right to take the proceeds of this defendant's property to apply to a debt which she did not owe and was not bound to pay, and the conduct of the said Groves in their attempts to hold her responsible without consideration for the debts of others is inequitable and unjust and gives them no right to apply to this court to inflict further injuries and wrongs on her.

This defendant, further answering says that, so far from acting with a full knowledge of said nullities and intending voluntarily *intending* to donate and give to the said Rhea heirs the various sums which she has paid them under the erroneous belief which they artfully fostered, and on which they now rely to further dispoil her, she never knew until the year 1886, when she was for the first time informed by Judge Rob't P. Hunter that she was not bound for said movables bought by her deceased husband during the existence of the community, and that said note and mortgage were void as to her, and that she was entitled to recover back the payments made by her in excess of the one-half of the debt due by the estate of her deceased husband and the said community as an ordinary debt, viz., in excess of $2,242.53; and this defendant further saith that, not doubting the honesty and capacity of the Rhea lawyers, she did not suspect any error or employ any lawyers until after said information from said lawyer, Judge Hunter.

300 This defendant, further answering, saith that the payments made by her, as shown by the proofs on file, overpay the portion of the debt she became bound for on account of the community by five thousand three hundred and sixty $\frac{23}{100}$ dollars, and this sum paid in error she is entitled to recover back from the said Rhea heirs.

This defendant paid in the three payments, two in April, 1870, $500 and $2,500, and a third payment on 28 April, 1873, $2,000, two thousand five hundred dollars of which were on her own account, and four hundred in April, 1875, overpaying Mrs. Rhea or said Groves at said last date by $226.34, which, with $1,500 paid in July, 1876, $780 in May, 1877, $428.29 in 1878, $646 in July, 1879, $501.91 in Oct., 1879, $500 in April, 1880, $389.84, Nov. 26, 1881, and $389.84 for one-half of payments made in 1882 and 1883, makes the said sum of $5,360.25 *dollars*, to be increased by any other sum paid by this defendant set up by said Groves' heirs as a pretended ratification or proved before the master.

And this defendant, further answering, says that she denies all and singular the allegations in said answer of said Groves filed 31st Dec., 1886, not herein admitted and inconsistent herewith, and thus defendant, further answering, amends her former answer filed August 2nd, 1886, on the twelfth line of the fifth page thereof by striking out the letter "d" of the word "supposed" and substituting the letter "s" in the place thereof in the same word.

And this defendant prays that the money paid into court by the complainant in this case be ordered by the decree of your hon. court

to be paid over to this defendant as an interpleader and to be applied to her own individual mortgage and for such other and further relief in the premises as the nature of the case and equity
301 and justice may require.

By MERRICK & MERRICK, *Solicitors.*

*Order.*

Let Mrs. Fanny B. Randolph be authorized to file the foregoing amended answer.

(Signed) EDWARD C. BILLINGS, *Judge.*

New Orleans, La., M'ch 15, 1890.

*Exceptions to Amended Answer. Filed March 22, 1890.*

G. W. SENTELL
*vs.*
MARTHA GROVES *et al.* } No. 11376.

Defendants Martha Groves and Wm. J. Groves and the representative of Mrs. Rosetta Rhea, deceased, now into court appears and, by leave thereof, file this their plea, exception, and demurrer to what is styled an amendatory answer on the part of Mrs. Fanny B. Randolph on March 15th, 1890, and says:

302 1st. That she and her sister, being the owners of the ground of "Leinster" plantation, purchased from complainant's ancestor the growing crops and immovables, made such by destination thereon, and, being without means to pay therefor, gave their note, with mortgage upon said plantation to secure same, and during the term of nearly twenty years or more paid partially on account thereof, leaving the balance due as claimed against G. W. Sentell, the complainant herein, with which they or either of them have no other interest.

2nd. That in their various proceedings herein the said Mrs. Randolph and the said Mrs. Stark, sisters as aforesaid, have not set forth any of their mutual agreements as between themselves of and relative to the subject-matter of their interests in the property of their ancestor, its division or partition, or what they each equally acquired, or of the debts assumed by each respectively, but have concealed same from the court.

3rd. That the acts and doings of each and both and of their duly authorized agents during said period of time of and concerning payments, renewals, and the notarial acts in connection with said property, and the rights of complainant cannot now, when the complainant with whom they treated is dead and is represented by heirs, be annulled or set aside for any cause whatsoever, and no proper or equitable plea therefor is or can be urged.

4th. That G. W. Sentell, having assumed in law to pay a debt to complainants secured by mortgage, is bound in law therefor, credit having been given by him therefor to Mrs. Randolph, the party in interest, with whom he contracted in law, and that any and

303 all rights, in equity or otherwise, pertinent in the premises are to be discussed as between such parties and said Sentell and not your complainants, who were not parties to any such agreement or obligation, but were absolute mortgage creditors of said property at said time when said mortgage was so made, same then being owned by both Mrs. Stark and Mrs. Randolph, parties thereto, and said complainants cannot be affected, collaterally or by oral testimony, in regard to their rights in the premises, and their action at law should prevail as against the original defendant therein, G.W. Sentell, with 8 per cent. per annum interest upon the amount deposited in court, and judgment should go accordingly.

Wherefore they pray these their exceptions may be maintained as to said amended answer of Mrs. Randolph, and the original bill of said G. W. Sentell, so far as it relates to your complainants, may be dismissed, with any and all rights reserved to him and complainants as against the said Mrs. Randolph and the said Mrs. Stark to discuss their rights as between themselves and obtain judgment of court thereon, and fully protect complainants in the premises; and they will ever pray, etc.

(Signed) W. S. BENEDICT, *Sol'r.*

*Hearing and Submission of Demurrer.*

Extract from the Minute Book, November term, 1889.

304 NEW ORLEANS, SATURDAY, *April* 5, 1890.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause came on this day to be heard on the demurrer to the bill of interpleader herein filed by Mrs. Dora Stark—present: E. Howard McCaleb, solicitor for Mrs. Stark; W. S. Benedict, for Martha Groves *et als.*; Farrar, Jonas & Kruttschnitt, for W. B. McLean, liquidator and testamentary executor—and was argued and submitted.

*Hearing and Submission of Exception to Amended Answer.*

Extract from the Minute Book, November term, 1889.

NEW ORLEANS, SATURDAY, *April* 5, 1890.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

G. W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

305 This cause came on this day to be heard on the exception to the amended answer herein of Mrs. Fanny B. Randolph,

filed by Martha Groves *et al.*—present, W. S. Benedict, solicitor for Martha and W. J. Groves; Merrick & Merrick, for Mrs. F. B. Randolph; Farrar, Jonas & Kruttschnitt, for W. B. McLean, liquidator and executor—and was argued and submitted.

*Decree. Entered and Filed May* 9, 1890.

Circuit Court of the United States, Eastern District of Louisiana.

GEORGE W. SENTELL
*vs.*
MARTHA GROVES *et als.* } No. 11376.

This cause having been heard and submitted upon the bill of complaint, the answers, the depositions, and affidavits and exhibits herein, and a judgment having been rendered, but before the decree in pursuance thereof had been engrossed the cause having been opened and a rehearing granted solely for the purpose of allowing Mrs. Stark to be made a party defendant in order that she might be notified of the accounting herein had and of the claim
306 of the defendant Mrs. Randolph that she had furnished out of her own money more than the half equal part of the amount paid upon the first mortgage, and there having been a rehearing, and the solicitors of the respective parties having been heard herein, and the court, having duly considered the testimony heretofore offered herein, doth now adjudge and decree, in accordance with the opinion of the court hereinbefore filed, that when the respondent Mrs. Randolph executed the mortgage she was a married woman; that the debt for which the mortgage was given was under our law a community debt, but that after she became *femme sole* by the death of her husband she many times ratified her act in executing the mortgage and must at this late day and after this long acquiescence be deemed and held to have done the same with requisite knowledge; and that the obligation into which she entered was the joint obligation of the respondent Mrs. Randolph and Mrs. Stark, of which each owed a moiety; that the mortgage was the mortgage of each,—obligor hypothecating her half of the property to pay the half of the debt owed by her and not for the amount owed by both obligors, and that there is by law an imputation of the payments which the obligors have severally made to the extinguishment of the moiety of the debt which they respectively owe;

And that, as appears by the report of the master herein, there is still due by the defendant Mrs. Fanny B. Randolph, after crediting her with the payments made by her out of her monies, only the sum of $602.14, and that the amount of her individual obligation up to that sum had been paid by her out of her individual monies.

It is further ordered, adjudged, and decreed that the com-
307 plainants costs and just allowance for his solicitor's fees be paid out of the fund in the registry of the court, and that there be paid to Wm. J. and Martha Groves the said sum of $602.14,

and that the balance of said fund be paid to W. B. McLean, testamentary executor of Benjamin Conyers, deceased, and liquidator of the partnership of G. W. Sentell & Co.

It is further ordered, adjudged, and decreed that each of the defendants herein pay his own costs, excepting those of the defendant Mrs. Stark, which it is ordered, adjudged, and decreed be paid out of the fund herein.

It is further ordered, adjudged, and decreed that, since the only object to be obtained by making the defendant Mrs. Stark a party defendant was that she might be affected with notice of the accounting herein, and she having been served with subpœna and having appeared and demurred to the bill of complaint herein and the complainant not insisting upon her being retained in the cause, the demurrer of the said Mrs. Stark be sustained, and that the bill of complaint as to her be dismissed.

It is further ordered, adjudged, and decreed that the objection to the amended answer of the defendant Mrs. Randolph be sustained so far as it is made upon the ground that, the cause being opened solely for the purpose of making a party defendant with reference to the accounting, the amendments, which might under other circumstances be treated as an amplification of the original answer, could not be made herein, and the amended answer is therefore dismissed.

It is further ordered, adjudged, and decreed that there be
308 allowed and paid out of the fund in the registry of the court a fee to E. M. Hudson, Esq., solicitor of the complainant, for services in filing the bill of interpleader and conducting the proceedings herein, of two hundred and fifty dollars.

It is further ordered, adjudged, and decreed that there be paid out of the funds in the registry of the court herein to the master specially appointed to take the testimony and state the account herein a fee of one hundred dollars.

May 9, 1890.

(Signed) EDWARD C. BILLINGS, *Judge.*

*Motion and Order for Appeal. Entered and Filed May 30, 1890.*

G. W. SENTELL *vs.* MARTHA GROVES *et als.* } No. 11376.

On motion of W. S. Benedict, solicitor for defendants, Martha Groves, William J. Groves, and Thomas A. Pogue, administrator, and on suggesting that they are aggrieved by the judgment herein; that there is error therein to their prejudice, and they are desirous of taking an appeal therefrom to the Supreme Court of the United States—

It is ordered by the court that an appeal be allowed ap-
309 pellants to the Supreme Court of the United States, to operate as a supersedeas, from the final decree herein upon their giving bond in the sum of five hundred dollars ($500.00), conditioned

as the law directs, said appeal to be made returnable at the next term of the honorable the Supreme Court of the United Sates.

(Signed) EDWARD C. BILLINGS, *Judge.*

Presented on the 27th May, 1890.
Allowed " 30 " 1890, as of the former date.
(Signed) EDWARD C. BILLINGS, *Judge.*

*Bond for Appeal. Filed May 30th, 1890, as of Date May 27th, 1890.*

UNITED STATES OF AMERICA:

Know all men by these presents that we, Thomas A. Pogue, administrator; William J. Groves, and Martha Groves, as principals, and Andrew Hero, Jr., of this district, as surety, are held and firmly bound, jointly and severally, unto Geo. W. Sentell, E. M. Hudson, Mrs. Fannie B. Randolph, Mrs. Dora Stark, wife of T. O. Stark; the clerk of this court, W. B. McLean, executor of Benj. Conyers, deceased, and liquidator of the firm of G. W. Sentell & Co., and
310 all other persons in interest in the sum of five hundred ($500) dollars, lawful money of the United States of America, to be paid to the said named parties, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 26th day of May, 1890.

Whereas the above-named principals have this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for an appeal, with supersedeas, from a final decree signed on the — day of May, 1890:

Now, the condition of the above obligation is that we, the above-bounden principals and said surety, will well and truly pay to the said obligees, the defendant in said appeal, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) THOS. A. POGUE, *Adm'r,*
WM. J. GROVES,
MARTHA GROVES,
By W. S. BENEDICT, *Sol'r.* [SEAL.]
ANDREW HERO. [SEAL.]

Bond and sufficiency of sureties approved.
May 28, 1890.
(Signed) EDWARD C. BILLINGS, *Judge.*

311 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby cer-

tify that the foregoing 310 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of George W. Sentell *vs.* Martha Groves *et als.*, No. 11376 of the docket of the said court.

Seal of U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness my hand and the seal of said court, at the city of New Orleans, this 12 day of July, A. D. 1890.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 12 day of July, A. D. 1890.

EDWARD C. BILLINGS, *Judge.*

312 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George W. Sentell, Mrs. Fannie B. Randolph, Mrs. Dora Stark, wife of T. O. Stark, and W. B. McLean, executor of Benjamin Conyers, deceased, and liquidator of the firm of G. W. Sentell & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Thomas A. Pogue, administrator; William J. Groves, and Martha Groves are appellants and George W. Sentell, Mrs. Fannie B. Randolph, Mrs. Dora Stark, wife of T. O. Stark, and W. B. McLean, executor of Benjamin Conyers, deceased, and liquidator of the firm of G. W. Sentell & Co., are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said motion and order mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12 day of June, in the year of our Lord one thousand eight hundred and ninety.

EDWARD C. BILLINGS, *Judge.*

313 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11376. G. W. Sentell *vs.* Martha Groves *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed June 14, 1890. E. R. Hunt, clerk.

*Marshal's Return.*

Received by U. S. marshal, New Orleans, La., June 12, '90, & on the 13th day of June, 1890, I served a true duplicate of the within original citation of appeal on the within-named appellees as follows, to wit, on George W. Sentell by handing to him in person a true duplicate of the within citation in the city of New Orleans; on Mrs. Fannie B. Randolph by handing a true duplicate of the within citation to E. T. Merrick, Esq., attorney of record for the said appellee, in New Orleans, she being absent from my district; on Mrs. Dora Stark, wife of T. O. Stark, by handing to her in person, in the city of New Orleans, a true duplicate of the within citation of appeal; on W. B. McLean, executor of Benjamin Conyers, deceased, and liquidator of the firm of G. W. Sentell and Company, by handing to him in person a true copy of the within citation of appeal in the city of New Orleans.

Returned June 14, '90.

JNO. B. DONNALLY,
*U. S. Marshal.*
By JNO. E. BOEHLER,
*Dy U. S. Marshal.*

John E. Boehler, being duly sworn, deposes and says that he is a lawful deputy United States marshal for the eastern district of Louisiana, and that the foregoing service was made by him in the manner set forth in the above return.

JNO. E. BOEHLER.

Sworn & subscribed to before me the 14th June, 1890.
E. R. HUNT, *Clerk.*

Endorsed on cover: Case No. 14,316. E. Louisiana C. C. U. S. No. 532. Martha Groves, William J. Groves, and Thomas A. Pogue, administrator of Rosetta Rhea, deceased, appellants, *vs.* George W. Sentell, Mrs. Fannie B. Randolph, *et al.* Filed October 17, 1890.

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CLERK

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1893.

MARTHA GROVES, WILLIAM J. GROVES and THOMAS A. POGUE, Administrator, etc., Appellants,
vs.
GEORGE W. SENTELL et al.
No. 278.

## BRIEF FOR APPELLANTS.

CHARLES W. HORNOR,
GEORGE A. KING,
WILLIAM S. BENEDICT,
*Solicitors for Appellants.*

MILANS, LAW PRINTER, 519 7TH STREET, N. W., WASHINGTON, D. C.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1893.

MARTHA GROVES, WILLIAM J. GROVES AND THOMAS A. POGUE, ADMINISTRATOR OF ROSETTA RHEA, DECEASED,
*Appellants,*
*v.*
GEORGE W. SENTELL, MRS. FANNIE B. RANDOLPH *et al.*
No. 278.

## BRIEF FOR APPELLANTS.

### 1. STATEMENT OF THE CASE.

The complainant, George W. Sentell, one of the appellees herein, on May 29, 1886, filed his bill of interpleader in the Circuit Court of the United States for the Eastern District of Louisiana against Martha Groves, William J. Groves, Fannie B. Randolph and William B. McLean as liquidator of the partnership of G. W. Sentell & Co., formerly composed of George W. Sentell and Benjamin Conyers, now in liquidation, and testamentary executor of said Benjamin Conyers, deceased. (Record, pp. 1-4.)

The bill avers that on March 1, 1884, the complainant bought at a sale made by the sheriff of the parish

of Avoyelles, in the State of Louisiana, in the suit of George W. Sentell *et al. v.* Fannie B. Randolph *et al.*, in the Twelfth District Court for the parish of Avoyelles, the following described property:

*First.* A certain tract of land designated as the Leinster plantation, containing about twenty-seven hundred acres, except, however, about eleven hundred acres which did not belong to said Fannie B. Randolph.

*Second.* An individual half-part share and interest in and to certain other parcels of land not involved herein.

Both of these properties are fully described in the sheriff's deed, Exhibit 1, page 30.

He further avers that the sale at which he became the purchaser of the property was to enforce the payment of a debt due by said Fannie B. Randolph, secured by a second mortgage by her granted to Johnson & Goodrich, which debt and mortgage were transferred with full subrogation to said G. W. Sentell & Co. in liquidation. (See this second mortgage, Exhibit 2, pp. 32-35, and act subrogation, Exhibit 3, pp. 35-38.) Complainant retained in his hands as a part of the purchase price of said property a sufficient sum to pay the amount of a first mortgage, which appeared from the records to exist upon said property and other property adjoining, being then about $6,037.12, being the mortgage apparently created by an act in favor of Mrs. Rosetta Rhea, executed January 11, 1868, by said Fannie B. Randolph, then wife of Christopher M. Randolph, and by him thereto authorized and Dora Lambeth, now wife of Theodore O. Stark. The mortgage act is Exhibit No. 4, record, p. 39.

The bill then sets forth a partition made June 9, 1873, between said Fannie B. Randolph and Dora

Lambeth, by act under private signature June 9, 1873, said Fannie B. Randolph becoming the owner of the property bought by complainant at the sheriff's sale and Dora Lambeth the owner of the remainder thereof, as shown by the act of partition, Exhibit No. 5, record, p. 5.

That the defendants, Martha and William J. Groves, legatees of said Rosetta Rhea, have sued complainant at law to recover the amount of their first mortgage. The record of the suit, which was in the United States Circuit Court, will be found in Exhibit No. 6, p. 46.

That Mrs. Fannie B. Randolph claims the money in complainant's hands as her own, and has notified him not to pay the money to said Martha and William J. Groves, Exhibit No. 7, p. 49. A similar notice was given him by William B. McLean as liquidator of G. W. Sentell & Co. and executor of Benjamin Conyers, deceased, Exhibit No. 8, record, p. 50.

The suit of Martha and William J. Groves against Sentell was brought April 1, 1886. The notice from Mrs. Randolph was given April 9, 1886, and that from William B. McLean May 1, 1886. The complainant tenders $5,743.46, and pays it into court, May 29, 1886.

The prayer of the bill is for an injunction restraining all proceedings at law to recover the said money by any and all of the defendants, and that the defendants may interplead and settle between themselves their right or claim to the money due or payable on the first mortgage.

A preliminary injunction was granted, and the defendants were required to interplead. They were also required to show cause, July 16, 1886, why an injunction should not be granted according to the prayer of the bill, and the right was reserved to the complainant to have his proper costs taxed against the fund so deposited in court, both in said action at law and in this cause. (Record, p. 5.)

The defendants, Martha and William J. Groves, moved June 10, 1886, for leave to withdraw the sum deposited in court on giving bond for the amount thereof. This motion was heard June 12, 1886, and refused June 14, 1886. (Record, pp. 9, 10.)

A demurrer was filed August 2, 1886, by Martha and William J. Groves, and was overruled December 13, 1886. (Record, pp. 11, 12, 21.)

Martha and William J. Groves then, December 31, 1886, filed their joint and several answer, which is in substance as follows. (Pp. 21, 26):

It admits the interpleader bought the property at sheriff's sale. That he well knew of the first mortgage of the respondents. The partition of the property may have been made but it is not known to respondents; nor do they know that Fannie B. Randolph became the owner of the property so thereafter purchased by George W. Sentell at sheriff's sale, and Dora Lambeth the owner of the other part thereof, and they have no interest therein. They admit bringing the suit for $4,873 and interest, etc. They are informed and believe that Fannie B. Randolph and William B. McLean have notified George W. Sentell that they claimed the money so retained; but they believe it was instigated by the complainant herein for his own benefit, and to the detriment of these respondents, who claim that Sentell owes them the money retained which is justly due them as the sole residuary legatees of Mrs. Rosetta Rhea, and duly recognized as such, holding as owners the following described note and the mortgage securing the same, as set forth in Suit No. 11,293, their suit against Sentell above alluded to.

The proceeding is then set forth of the Sheriff's sale of the property of Fannie B. Randolph, March 4, 1884, (p. 23 at foot) to George W. Sentell, which property is almost identical with that which was mortgaged to

respondents, and said Sentell bought subject to said mortgage, and retained in his hands as part of the price of the property so purchased by him an amount sufficient to pay the balance on said note, and assumed to pay said note and mortgage as part of the purchase of said property, and has recognized said Rosetta Rhea and these respondents, her successors, as owner thereof, and as entitled to payment of same, and now refuses to pay the amount.

That both Madames Randolph and Stark have recognized by authentic acts and power of attorney to T. O. Stark, the said note and mortgage in payments made by themselves, and by payments made by others, with subrogation down from 1870 to 1884, including George W. Sentell and his said firm "and complainant's and interpleader's attempted denial thereof in this case is in bad faith, and their acts, in good conscience, estop them from the proceeding herein." (Record, p. 24.)

That her acknowledgments made after her husband's death bind her, even if the debt was a debt of the community, which is denied; that the mortgage was an indivisible obligation resting upon property held in indivision by the mortgagors; that whether Mrs. Randolph has paid more than the half or the quarter of the amount of said note can in no manner affect the rights of these defendants under said mortgage; that any such pretended overpayment by Mrs. Randolph is a matter for adjustment between herself and Mrs. Stark, and is a matter with which the defendants have no concern, and she cannot arrest them in the prosecution of their mortgage rights. (P. 25.)

That George W. Sentell is bound absolutely to the respondents according to his bid, assumption and deed of sale, and it is only upon the funds realized from such bid that the court in this controversy can adju-

dicate, and all the rights of all other parties to this controversy may and can be adjusted otherwise. (P. 25.)

That it is contrary to equity and good conscience to permit Mrs. Randolph after the indulgence and extensions allowed her by Mrs. Rhea, and after the repeated acknowledgements by Mrs. Randolph of said note and mortgage to deny the validity thereof. (P. 25.)

That respondents' mortgage rests and rested against all of said property, and they have the right to enforce the same against all or any part thereof, and especially against complainant, who assumed as part of his purchase price, the amount due to these respondents with interest, all just damages and counsel fees in this behalf most inequitably caused by the wrongful action of complainant. (P. 25.)

That no other person or persons are interested in or entitled to any part of said fund due by complainant as part of his bid aforesaid, and deposited in the registry of this court, and the interest due thereon, save these respondents, etc. (P. 25.)

The prayer is for a decree against complainant and all the other defendants herein; that the fund in the registry is the property of these respondents, and that the same be paid to them, and that the matter be referred to a master to ascertain what further amount may be due to respondent by complainant as interest until final payment under his contract, agreement, and assumption hereinbefore set forth, and what further damages and also what costs are due to these respondents by said complainant. (p. 26).

The separate answer of Fannie B. Randolph is as follows: (pp. 12–16)

*First.* She requires proofs of the defendant, Groves, as to the note of January 1, 1868, and "she supposes that

the old firm of George W. Sentell & Co. is in liquidation in the hands of W. B. McLean, as set forth in said bill of complaint." (Rec., p. 12, August 2, 1886.)

*Second.* A general admission of Sentell & Company's suit against her and the sale of her property by the sheriff by virtue of a subrogation of G. W. Sentell & Co. to the promissory notes of Johnson and Goodrich against her, secured by mortgage, as shown.

*Third.* She admits the partition between herself and her sister, Mrs. Stark, assisted by her husband, T. O. Stark, January 9, 1873. (P. 13).

*Fourth.* She admits the suit of *Martha and William J. Groves* v. *G. W. Sentell* to recover the amount deposited, $5,743.46, and the notice of her counsel to the complainant not to pay it over, claiming to be entitled to the same herself. (P. 13.)

*Fifth.* That at and prior to January 1, 1868, and to the execution of the note and mortgage of her property she was a married woman, the wife of C. M. Randolph, who, for the benefit of the community, made an arrangement with Mrs. Rhea, whereby certain mules, &c., were transferred in fact to the community existing between her and C. M. Randolph and to Miss Lambeth, now Stark, and "that by operation of law then in force the pretended conveyance of said property to defendant and Miss Dora Lambeth could not make the said movable property any the less community than the conveyance direct to said Randolph, nor was said property declared to be separate property." She admits the signatures to the notes, in the form of a joint note, purporting on its face to bind each signer for their virile share, respectively, viz., each for one-third. (13th page of Record.)

That said note as to her was void, because she could not bind herself for a community debt; not herself for her husband, nor conjointly with him for debts contracted by him, as this debt necessarily was, and the note being void the mortgage is also void. (P. 14.)

*Sixth.* That her husband died, inventory of the property belonging to the community made and valued at $2,030.64, and for $187 separate property; that the community property was adjudicated to her; that in 1869 she stated her account and placed Mrs. Rhea thereon as a creditor. She accepted the community, and supposed herself bound for one-half the community debt, or for about $2,242.53 of $8,970.12, the amount of the mortgage note given for said personal and movable property sold by said Mrs. Rhea to this defendant's husband and Dora Lambeth in January, 1868, during the lifetime of defendant's husband, who, during the marriage, administered the property and effects of this defendant for the benefit of the community aforesaid.

*Seventh.* That she became bound by accepting the community for only $2,224.53, and this sum and interest she has long since paid, in whatever form credited, together with the whole amount of the proceeds of the estate of C. M. Randolph for $2,030.64.

*Eighth.* That M. & W. J. Groves have no right to apply this defendant's funds to the payment of the debts of Mrs. Dora Stark, nor any right to take the proceeds of this defendant's property now deposited in court for such purpose; nor were they in any way entitled to the deposited money or any part thereof could they retain the same without subrogating the defendant to a valid, unprescribed claim and mortgage against all that part of the real property men-

tioned in said act of January 1, 1868, held by said Dora Stark under said partition or otherwise. And she avers a great overpayment of all liability incurred by defendant by accepting said community, or legally administering the same, or in other lawful manner out of this defendant's money and funds.

The answer of William B. McLean, as executor of Conyers and liquidator of G. W. Sentell & Co. (Rec., p. 17) admits that the proceedings in suit No. 7,049 were brought by the firm of G. W. Sentell & Co., then composed of G. W. Sentell & Conyers, and on execution the sale aforesaid was made to G. W. Sentell. That the firm of G. W. Sentell & Co. is dissolved, and he, McLean, is liquidator thereof and also executor of Conyers. He admits the partition of the property mortgaged January 1st, 1868, and that he has demanded that the sum retained in the hands of said Sentell should be paid over to him, for these reasons.

*First.* That the alleged act of purchase made January 1st, 1868, by Fannie B. Randolph, wife of C. M. Randolph, and Miss Dora Lambeth of certain property from Rosetta Rhea, was a joint purchase, and that the vendee's obligation was a joint, and not a several liability, and that in no event could Mrs. Randolph be liable for more than one-half of the same: (P. 15.)

*Second.* A mere reiteration of the story about the community debt; note void, and of no effect; and under no circumstances liable for more than one-fourth of the indebtedness of the purchase and sale of January 1, 1868.

*Third.* That Fannie had paid all she owed on the note, out of her own pocket, more than her virile share of the said debts.

*Fourth.* The property mortgaged was the separate property of Mrs. F. B. Randolph, and the mortgage to secure the community debt aforesaid was void.

*Fifth.* That the mortgage to Johnson & Goodrich, transferred to G. W. Sentell & Co., was a mortgage attached to Mrs. Randolph's divided share for $8,000, sued on and property sold under execution for said firm, and a large amount still remains due, $8,128.96, and defendants have no security for it except the fund retained by G. W. Sentell held by him for account of whom it may concern.

*Sixth.* If the note of Mrs. Randolph be a solidary obligation, and bound to secure not only her virile share but Dora's virile share, that the Groveses should be compelled to exhaust the other half of the said plantation, owned and controlled by her before claiming any right to the fund herein; that the Groveses having two funds to resort to to obtain payment, it would be inequitable for them to seize the property of the surety for the debt before they seize the property of the principal, Mrs. Stark, and still more so to allow them to make this resort first upon the property of said Fanny B. Randolph before exhausting their demand and claim against the said Dora Lambeth Stark.

Prayer, that the fund retained by G. W. Sentell be paid over to him as liquidator and executor to be applied to the payment of the mortgage and judgment aforesaid, and if it be determined that the fund in court is in any manner liable for that portion of the debts sued on by the Groveses and due by Dora, that before the Groveses can apply any portion of the fund to the payment of their claims, they shall be compelled to exhaust their remedy against the property owned by Dora and bound by mortgage to secure the

same, and that they shall have resort upon the said fund only for such balance, if any, as may remain due after exhausting their remedy upon half of said property belonging to Dora, and that all the remainder of said fund after satisfaction of the claim aforesaid shall be paid over to this defendant. (Rec., p. 19.)

Replication by complainant to Fannie B. Randolph's answer was filed August 28, 1886, (p. 16) to W. B. McLean's answer, November 4, 1886, (p. 20) to M. & W. J. Groves, December 31, 1886, (p. 21).

The evidence showed the following facts:

William M. Lambeth had two daughters, Fannie and Dora.

The daughters, his sole heirs, inherited his plantations from him. There were four of these, the Leinster, Lucky Hit, Dora and Bayou Jack, besides an undivided interest in the Tchoupique lands.

Fannie married Christopher M. Randolph, April 11, 1865. He died September 22, 1868. (Deposition of Mrs. Randolph, p. 66).

Dora in December, 1868, married Theodore O. Stark, who still lives. (P. 73).

During the three years that Mrs. Randolph was married her husband managed the plantations and had entire charge of his wife's business. (66, 67).

When they got to the plantation, immediately after the war, there was nothing left on the place. They had to buy everything to make the crops.

During the years 1866 and 1867 the Leinster plantation was rented to John Rhea. The date of this lease does not appear, but it was probably for two years from January 1, 1866. He died about October 18, 1867. (P. 126.) He was a resident of Indiana, where his widow, Rosetta Rhea, administered upon his estate. Among the assets of his estate in Louisiana and on the Leinster plantation were a lot of

mules, canes, etc. Mrs. Randolph and her sister required the animals and implements to work the plantation. She testifies (p. 67): "We had everything to buy to make the crops." These they purchased from Mrs. Rhea for $8,970.12, for which they gave the following note. (P. 152):

"$8,970.12. AVOYELLES, LA.,
"LEINSTER PLANTATION, *January 1st*, 1868.

"Two years after date we promise to pay to the order of Mistress Rosetta Rhea, at the Citizens' Bank of Louisiana, in the city of New Orleans, eight thousand nine hundred and seventy and 12-100 dollars for value received, with interest at the rate of eight per cent. per annum, from date until paid. Not negotiable.

"(Signed). FANNIE B. RANDOLPH,
C. M. RANDOLPH,
DORA LAMBETH."

To secure the payment of this note they made the mortgage. (Pp. 39 to 41.) By authentic act of the same date Mrs. Randolph, with the authorization of her husband, and Dora Lambeth declared that they are indebted to the widow Rhea in the sum of $8,970.12, being the balance due by them for the purchase price of certain mules, canes, etc., which belonged to John Rhea at the time of his death on the Leinster plantation.

| | |
|---|---|
| "That the price agreed upon was, . . | $13,470 12 |
| From which is to be deducted, . . . | 4,500 00 |
| the amount due by said Rhea for rent of said Leinster plantation for the year 1867 and for the securing whereof they have the privilege of lessor (all others for laborers, wages, etc., being extinguished upon all said property,) leaving the said balance of, . . . . . | 8,970 12 |

* * * and to represent said sum they have made their certain promissory note, dated this day, payable at the Citizens' Bank of Louisiana, in the city of New Orleans, on the 1st day of January, 1870, to the order of said Mrs. Rosetta Rhea for said sum and bearing interest at the rate of eight per cent. per annum from date till paid, and which note is not to be negotiated except upon compliance by said Mrs. Rhea with the conditions hereinafter stipulated." * * * "That said Mrs. Rhea is to procure a judicial recognition of her right to the estate of her said late husband as his sole heir and an order putting her in possession as such of all his estate or furnish conclusive proof to the satisfaction of said Mrs. Randolph and Miss Lambeth of her being his sole heir or extinguish opposing claims, if such there should be, and that until said condition be complied with by Mrs. Rhea that payment of said note is not to be demanded nor the title to said note transferred until such compliance and that any transfer or negotiation thereof shall only be valid after the performance of the conditions."

Then follows a description of the property mortgaged, its ownership in said Mrs. Randolph and Miss Lambeth, and "by reference to the annexed certificate of the Recorder of Mortgages of the Parish of Avoyelles it appears there are no mortgages or incumbrances standing recorded against said property." The notary entitles this act as "Fannie B. Randolph, Miss Dora Lambeth to Mrs. Widow John Rhea."

This mortgage included the Leinster plantation, containing 2,405 acres, as well as a tract known as the Falkland tract adjoining, which contained 580 acres.

From the date of this note and mortgage the plantation was worked by Mrs. Randolph and Miss Lambeth through the agency of Mr. Randolph (pp. 66, 67). Mrs.

Randolph is asked by her counsel, "What did he buy?" meaning her husband. A. "I suppose mules; we did not work the plantation till 1868; they were worked by others on the places" (pp. 67, 32, 73). (John Rhea's lease is not in the record.) "The mules were not sold by Mr. Randolph?" A. "Not that I ever heard of, and I feel quite sure they were not stolen, but they were used to work on the plantation."

On account of the note, $3,000, in April, May, and June, 1870, grouped together in the report of the special master (p. 152) is reported as paid in three "checks."

Stark was settling up the estate of William M. Lambeth, and paying over to Mrs. Rhea out of the funds of the estate for the account of the heirs, Fannie and Dora, as fast as Stark pleased with Mrs. Rhea's consent, and more than three months after maturity of the note. He must have authorized two drafts drawn upon him (p. 106); both are dated 6 April, 1870, one at thirty days' sight for $1,000 and one at sixty days' sight for $1,500, because he accepted and paid them, the first probably at maturity, for, though endorsed, nothing appears to the contrary. On the second he paid 20 June, 1870, $500; July 22, 1870, another $500 No receipt needed for the balance of $500 remaining due, but mere possession of the draft shows it has been paid, but when the record does not disclose From these documents it is proved that $1,000 was paid thirty-three days after acceptance, say 9 May 1870, and $500 on the 60-days draft, 20 June, 1870 and July 22, 1870, $500, and at some indefinite date the remaining $500. The so-called "check" for $500 15 April, 1870, does not appear in the record.

January 1, 1873, the voluntary partition was made between Fannie and Dora Lambeth, now the wife of T. O. Stark, (Rec., pp. 42 to 46; also pp. 97 to 101.

Signed by the three as in the act of mortgage and note, thus:

F. B. RANDOLPH.
DORA L. STARK.
T. O. STARK.

The partition is headed, but not by a notary, "Mrs. F. B. Randolph and Mrs. and Mr. T. O. Stark." A perusal of this private act will show that Stark was not *partitioning*, but only assisting his wife in doing it, just as Landolph had assisted his wife in buying the mules, &c.

Of all the property inherited by Mrs. Randolph and Mrs. Stark from their father only the Leinster and Dora plantations seem to have been left them. In the partition part of the Leinster plantation fell to Mrs. Randolph and the remainder of it, with the whole of the Dora plantation, to Mrs. Stark.

About this time there was prepared a sketch of a power of attorney from Mrs. Randolph and Mrs. Stark. It is in record, p. 105. Mrs. Randolph says: "I do not know anything about it, only I suppose it is a paper concerning those mules which were bought by Mr. Randolph from the Rhea estate." (Record, p. 70.)

April 23, 1873, a real power of attorney (Record, p. 143) from Mrs. Randolph and Mrs. Stark was made into an authentic act on April 28, 1873, for on that day (Record, p. 139) Act before N. B. Trist, N. P. "Partial payment with subrogation and extension of time" was passed, (Defendants' No. 8, p. 139) for $2,000.

The parties to this act are Rosetta Rhea, by her attorney in fact, Victor Olivier, Jr., Nalle & Cammack, a commercial firm, by Edward Nalle, a member thereof, Mrs. Dora Lambeth, and Mrs. Fannie B. Randolph, by Theodore O. Stark, "by virtue of the power of attor-

ney, dated April 23, 1873, hereto annexed for reference and made part hereof." (Record, p. 139.)

The note for $8,970·12 is fully set forth and the mortgage securing its payment. "That whereas the said firm of Nalle and Cammack * * * have paid $2,000 on account of said note * * * the said Victor Olivier, Jr., in his capacity aforesaid, does subrogate the said Nalle & Cammack to the extent of the said sum of $2,000 to all the rights of Mrs. Rosetta Rhea in and to the said note * * * and to the same extent to the said mortgage of January 1, 1868," &c. The partial payment is endorsed on the note. In case of the foreclosure of the mortgage to pay the note, the balance due to Rosetta Rhea is to be paid first and in full, and Stark, in behalf of his principals, agrees to the division of the indebtedness, and he and the said Olivier declared that after a careful computation of interest and deduction of partial payments made by the drawers of said notes, the amount now remaining due on said note is $9,579.34, which is extended to March 1, 1874, with privilege then of a further renewal for one year, upon certain conditions, without prejudice. Nalle & Cammack extend the payment of the $2,000 due them on the note to 1st March, 1874. The last clause in the act acknowledges that Mrs. Rhea is the rightful owner of the said promissory note and alone entitled to receive payment of the same. (Record, p. 141.)

All this is endorsed on the note, *ne varietur*. (Record, p. 112.)

21 April, 1875, $400 was paid on account of the interest due on the note. (P. 112.)

15 May, 1875, act before A. Hero, Jr., N. P., Fannie B. Randolph declared that in her joint cultivation with Dora Lambeth, wife of T. O. Stark, up to December, 1872, of the Dora and Leinster plantations, they be-

came indebted to Johnson & Goodrich, $30,000 for supplies and advances made, who have sued them both to recover the same; they now compromise the indebtedness for $16,000 in equal installments on January 1, 1876, 1877, 1878, for which each should furnish their note for $8,000, secured by mortgage on the respective plantations of each, and in addition thereto said Mrs. Stark should grant a mortgage on her plantation as security for the payment of $4,400 of the note to be furnished by said Mrs. Randolph, all relative to which will more fully appear by reference to a certified copy of the original agreement of compromise entered into by the original parties annexed for reference.

The certificate of mortgage is dispensed with. (P. 35.)

Neither Mr. nor Mrs. Stark sign this act. Nor is the act produced by which Mrs. Stark's notes and mortgage were executed, though the act was contemporaneous.

June 2, 1875, almost immediately after the above act, Johnson & Goodrich, (record, p. 35) before the same notary, A. Hero, Jr., subrogate G. W. Sentell & Co., in liquidation. The present complainant subscribes the act for his firm. (P. 38.)

31 March, 1876, interest was paid on Mrs. Rhea's note to 4 July, 1876. (P. 112.)

5 May, 1877, by mutual consent the payment of the within note is postponed to March 5, 1878, interest having been paid to that date, and the principal has been reduced by payment made on account at various times to the sum of $6,740, which is the amount now due thereon. "New Orleans, May 5th, 1877, V. Olivier, Jr., agent of Mrs. R. Rhea, T. O. Stark, agent for Mrs. Randolph and Mrs. Stark." (Record, p. 112.)

9 April, 1878, interest paid to March 5, 1879, to

which date the payment of the said note has been postponed. (P. 112.)

It thus appears that from June 2, 1875, George W. Sentell, complainant, and his commercial firm, jointly and severally, were the holders and owners of Fannie B. Randolph's and Dora Stark's notes, six in number, all secured by the very same property already mortgaged to Mrs. Rhea.

July 2, 1879, an act of payment with subrogation was passed between V. Olivier, Jr., agent for Mrs. Rhea, and G. W. Sentell & Co. for the sum of $1,239, $740 on principal, and $499 for interest, etc. V. Olivier, Jr., subrogates them to the extent of $1,239 to all the rights, etc., of said Mrs. Rhea to said note, etc. "It being further agreed and understood by and between the parties hereto that on a distribution of the proceeds of said mortgaged property the balance due to Mrs. Rhea on said promissory note shall be paid in full in principal, interest and costs before any portion thereof shall be applied to the payment of the claim of G. W. Sentell & Co. arising from the present payment and subrogation." (Record, pp. 144, 145.)

Stark, the agent under the power of attorney, (p. 143) "intervened as attorney in fact of his wife, Mrs. Dora Lambeth and Mrs. Fannie B. Lambeth * * * and in the names of his said constituents, does hereby agree and consent to the division of the debt represented by said promissory note in the manner herein effected." (Record, p. 145.) By this act, likewise the principal of the Rhea note was reduced to $6,000, and was so endorsed on the note. (Record, p. 113.)

In the act on page 145, of July 2, 1879, $740, principal, and $499 for interest, reduced the note to $6,000.

April 28, 1880, the principal of the note was reduced to $4,873, all interest paid up to 5 March, 1881, to which date payment of the note is postponed.

(Record, p. 113.) Also on same day the authentic Act, (record, p. 146).

Sentell & Co. paid on the note, principal $610.15, interest $387.85, from March 5, 1880, to March 5, 1881, with subrogation to Sentell & Co. to $1,000. (Record, pp. 146, 147.) The interest was paid, and payment postponed to March 5, 1882.

May 12, 1883, N. B. Trist, as agent for Mrs. Rhea, extended the note to March 5, 1884. (Record, p. 113.)

May 12, 1884, Sentell & Co. pay $389.84 for one year's interest up to March 5, 1884, and are subrogated *pro tanto* "specially reserving, however, in my own favor of priority of payment for balance due me thereon over said G. W. Sentell & Co." (Record, p. 113.)

This leaves $4,873 due on the note with eight per cent. interest till paid from 5 March, 1884, and it was then sued for, at law, in Groves *v.* Sentell, (record, p. 46,) April 1, 1886, and this is the prayer of these appellants in their answer to this suit. (Record, p. 22.) The amount deposited in Registry, (record, p. 6) is $5,743.45.

G. W. Sentell detained out of the purchase money of the property he bought at Sheriff's sale $6,037.12, doubtless claiming not for himself the difference between this sum and that deposited in the registry, but for the firm of which he was a member by virtue of their subrogation. (P. 31.) "The balance paid Sentell & *al.*, in suit No. 7,049, $5,320.81," is as stated in the Sheriff's deed. (Record, p. 31.) The Sheriff's return (record, pp. 64, 65) "$6,037.12, which amount was retained in the hands of purchaser, and still rests on the property, the remainder being $5,320.81, which amount I have credited on this writ."

June 11, 1888, case was heard and continued. (Rec., p. 27.) On June 16, 1888, it was argued and submitted. (Rec., p. 150.) Order: Question as to whether Mrs.

Randolph made certain payments to be reargued (Rec., p, 150), 28 December, 1888. This argument was heard, and H. J. Carter appointed special master to state the account showing how much is due the defendant, Mrs. Randolph, and what has been paid by her, &c., May 25, 1889, (Rec., pp. 150, 151).

14th June, 1889, the judge caused to be entered on the minutes the following:

"In this cause in order that a proper decree may hereafter be entered, the court being of opinion that when the respondent, Mrs. Randolph, executed the mortgage she was a married woman, that the debt for which the mortgage was given was under our law a community debt, but that [after] she became a *femme sole* by the death of her husband, she many times ratified her act in executing the mortgage and must at this late day and after this long acquiescence be deemed and held to have done the same with requisite knowledge; and being further of opinion that the obligation into which she entered was the joint obligation of the respondent, Mrs. Randolph, and Mrs. Stark, of which each owed a moiety, and that there is by law an imputation of the payments which the obligators have severally made to the extinguishment of the moiety of the debt which they respectively owe, and in order to ascertain how much is still due and owing from the respondent, Mrs. Randolph, it is ordered that the matter be referred to Henry J. Carter, who is made special master herein, to make up and state the account showing how much was due as the moiety of the defendant, Mrs. Randolph, and how much has been paid by her; and to carry out this order he is hereby authorized on due notice to take additional evidence, if any shall be required. (P. 151.)

21 June, 1889, the special master reported due by Mrs. Randolph on the day the money was deposited in the registry of the court $602.14. (Rec., p. 154.)

June 22, 1889, M. & W. J. Groves applied for a rehearing. (Rec., p. 154, *et seq.*)

June 27, 1889. The same parties objected to the report of the special master on special grounds filed and still relied on.

23 November, 1889. The report and the exceptions thereto were argued, all counsel present, and submitted when the Court took time to advise.

January 14, 1890. The Court then decides that "When two or more persons unite in a mortgage upon land held by them in indivision to secure the payment of a joint note that each mortgages only his own interest to pay his own proportion of the note. The reasons the Court give are that solidarity is never presumed and that the mortgage being an incident of the debt is controlled by it."

"As to the other point that the other joint debtor and mortgagor ought to be a party to this accounting I think the point well taken. Payments were made by one joint debtor on a joint debt. Nothing was done by her to show that she paid except for both debtors. Although equity allows her to insist upon the imputation of her payments to her own portion of the debt it involves an examination of facts which make the presence of the other debtor as a party proper, though perhaps not strictly necessary. The application for a rehearing is granted to the extent of the matter of the accounting as to what portion of the payments upon the mortgage and the note should be imputed to Mrs. Randolph; as to other matters provided for in the decree it is refused. Let Mrs. Stark be made a party defendant; let a subpœna and a copy of the bill of complaint be served on her and let her appear and plead on or before the next rule day." (Rec., p. 158).

March 3, 1890. Mrs. Dora Stark appeared by her counsel, E. Howard McCaleb, and demurred on the 6th (Rec., p. 159,) on many grounds; amongst them that her presence was not necessary, and that the

Court could not order it, "the same not being requested or demanded by either party." T. O. Stark, her husband, seems never to have authorized her to stand in judgment. (P. 159).

March 5, 1890. Mrs. Randolph files an amended answer. (P. 160).

March 22, 1890. Exceptions to amended answer. (P. 164).

April 5, 1890. The demurrer of Mrs. Stark was heard and submitted. (P. 165).

Same day. The exception to Mrs. Randolph's answer was argued and submitted. (P. 165).

May 9th, 1890. The final decree. (P. 166.) After reciting preliminaries it directs that "the complainant's costs and just allowance for his solicitor's fees be paid out of the fund in the registry of the court, and that there be paid to Wm. J. and Martha Groves the said sum of $602.14, and that the balance of said fund be paid to W. B. McLean, testamentary executor of Benj. Conyers, deceased, and liquidator of the partnership of G. W. Sentell & Co." (P. 166).

It is further ordered "that each of the defendants herein pay his own costs, excepting those of the defendant Mrs. Stark, which it is ordered, adjudged, and decreed be paid out of the fund herein." Her demurrer is sustained, and the bill as to her dismissed. The amended answer of Mrs. Randolph is dismissed upon a special ground.

A fee is allowed to E. M. Hudson, solicitor for the complainant, $250; and "that there be paid out of the funds in the registry of the court herein to the master specially appointed to take the testimony and state the account herein a fee of $100."

## 2. Assignment of Errors.

The appellants hereby assign the following errors in the rulings and decree of said Circuit Court:

*First.* Said court erred in overruling the demurrer of these appellants to the bill of interpleader, whereas said court should have sustained said demurrer on the ground that the complainant had no standing in a court of equity to file a bill of interpleader, being absolutely bound by his bid and assumption of the mortgage of these appellants.

*Second.* Said court erred in giving the following instructions to the special master to whom the case was referred (p. 151): "That when the respondent, Mrs. Randolph, executed the mortgage she was a married woman; that the debt for which the mortgage was given was under our law a community debt, but that [after] she became *femme sole* by the death of her husband, she many times ratified her act in executing the mortgage, and must at this late day and after this long acquiescence be deemed and held to have done the same with requisite knowledge; and being further of the opinion that the obligation into which she entered was the joint obligation of the respondent, Mrs. Randolph, and Mr-. Stark, of which each owed a moiety, and that there is by law an imputation of the payments which the obligators have severally made to the extinguishment of the moiety of the debt which they respectively owe, and in order to ascertain how much is still due and owing from the respondent, Mrs. Randolph," etc., whereas said court should have held that the debt was joint and several, and that the mortgage was an entirety, and the whole of the land covered by said mortgage was absolutely bound for the whole sum due on the note and mortgage, and should have adjudged accordingly.

*Third.* Said court erred in sustaining the report of the special master, (pages 151 to 154) whereby Mrs. Fannie B. Randolph is credited with certain payments

and certain others are credited one-half to Mrs. Randolph and Mrs. Stark respectively, whereas said court should have held that all of said payments were made upon the whole note and mortgage, and as against these appellants should have been simply credited thereon, it being wholly immaterial to these appellants out of whose funds the same were paid, or what division the said debtors, Mrs. Randolph and Mrs. Stark, made of the liability between them, and should have sustained the exceptions to the report, (pp. 156, 157) filed by these appellants thereto.

*Fourth.* Said court erred in holding and decreeing that the obligation into which said Mrs. Randolph and Mrs. Stark entered was their joint obligation, of which each owed a moiety; that the mortgage was the mortgage of each obligor, and obligated only her half of the property to pay the half of the debt owed by her, and not for the amount owed by both obligors, and that there is by law an imputation of the payments which the obligors have severally made to the extinguishment of the moiety of the debt which they respectively owe, and in, therefore, holding these appellants to be entitled to only the sum of $602.14 (pp. 166, 167) whereas said court should have held that these appellants were entitled to the whole of the funds in court, with interest against the complainant at eight per cent. per annum until final payment thereof.

*Fifth.* Said court erred in adjudging and decreeing to the solicitor for the complainant a fee of $250, payable out of the fund in court, (p. 167) whereas no fee should have been allowed to the solicitor for the complainant.

### 3. Brief of Argument.

Appellants' case rests upon the note and authentic

act (the former on record, p. 39, and the latter, p. 112) the usual form of such instruments in Louisiana. The authentic act under Louisiana law is by statutory enactment precisely equivalent to a confession of judgment, and article 2,236 civil code of 1870, says: "Is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns unless it be declared and proved a forgery."

There is no pretence that the two documents, the note and authentic act are forgeries. There is no denial that they have been recognized over and over again by the contracting parties from the day of their execution to the present time when, by payments of principal and interest at various times, the amount due is by authentic act admitted to be $4,873 with interest thereon at eight per cent. per annum until paid from March 5, 1884.

The defence is, in its essence, that one of the parties, to wit, Mrs. Fannie Randolph has paid more than her share of the said debt; that instead of owing the whole amount now due, principal and interest, she can escape all liability and have the mortgage on her property covered in part by it, released on the record by her paying only the sum of $602.14 without interest and *with* costs.

This result is reached by the following asserted propositions of law, viz.:

*First.* That the debt was a community debt between Mrs. Randolph and her husband.

*Second.* But Mrs Randolph having many times ratified her act in executing the mortgage is now bound by it.

*Third.* And bound by it only and strictly jointly with her sister, Mrs. Stark, under Louisiana law, for

the payment of the note and mortgage, "of which each only owed a moiety."

*Fourth.* "That there is by law an imputation of the payments which the obligors have severally made to the extinguishment of the moiety debt which they respectively owe."

*Fifth.* And relying on two authorities, quoting them, "That when two or more persons unite in a mortgage upon land held by them in indivision to secure the payment of a joint note, that each mortgages only his own interest to pay his own propotion of the note. The reasons the court give are that solidarity is never presumed, and that the mortgage being an incident of the debt is controlled by it." (Record, p. 158.)

*Sixth.* All these propositions are resumed in the final decree. (P. 166.)

Each of the propositions of law is assigned as error by these appellees, as well as the following resulting from their adoption:

*Seventh.* The instructions given to the special master as to the mode of stating the account are assigned for error, because the record showed that none of the payments had been made specially by Mrs. Randolph in liquidation of her own moiety, and went directly to the contradiction of authentic acts without any pleadings to warrant any such action.

*Eighth.* The court erred in giving McLean or Sentell any sum of money whatever, and in not decreeing that they were bound in solidarity to the appellants for the full amount of their claim, whose mortgage still existed in full force and virtue upon the property. Sentell & Co. duly assumed the mortgage by the pur-

chase they undertook to make, and are now bound to pay the full amount due thereon, or permit the property to be sold over again under the appellants' mortgage.

*First.* Was the debt a community debt between Mrs. Randolph and her husband?

Unfortunately, perhaps, the note and the mortgage forming in fact and legal effect but one instrument, the note being made a part of the mortgage act, "paraphed to identify it with this act," have been separated in the preparation of the record in this case. The mortgage act is on pages 39, 40, and 41. The note is on pages 112, 113. To separate them now when they formed but one instrument in their origin and continued so until the decree rendered in this case, would be a simple nullification of the contract.

The parties to both note and mortgage were the two sisters, Fannie Randolph and Dora Lambeth, the former then a married woman and requiring the assistance of her husband to contract; the latter then a single woman of full age and under no authority. The act sets forth: Before me "personally came Mistress Fannie B. Randolph, wife of Christopher M. Randolph, by him authorized, and Miss Dora Lambeth, all of this parish, who severally declared that they are indebted unto Mrs. Rosetta Groves" * * * in the sum of $8,970.12, being balance due by them [necessarily Fannie and Dora—not Christopher] for the purchase price of certain movable property, mules, canes, etc., * * * which was upon the Leinster plantation (owned by said Mrs. Randolph and Miss Lambeth) * * * leaving the said balance due by them (Fannie and Dora) which they (Fannie and Dora) promise to pay to said Mrs. Rhea in two years from January 1, 1868, and to represent said sum they (Fannie and Dora) have

made their (Fannie and Dora's) certain promissory note, payable * * * on the 1st day of January, 1870, to the order of said Mrs. Rosetta Rhea for said sum and bearing interest at the rate of eight per cent. per annum from date until paid. * * * In order to secure unto said Mrs. Rhea payment of the said debt and said note evidencing the same the said Mrs. Randolph and Miss Lambeth do hereby mortgage (here follows description of the real estate) "and all of said lands were inherited by said Mrs. Randolph and said Miss Lambeth, duly recognized as such and placed in possession by orders rendered by the Second District Court of New Orleans in the succession of their said father, No. 6286 of the docket." * * *

The act is signed as follows:

FANNIE B. RANDOLPH,
C. M. RANDOLPH,
DORA LAMBETH,
(Record, p. 44).

The note is drawn in exact conformity to the act and is on record. (Pp. 112, 113.) It is signed precisely in the same way as the act:

FANNIE B. RANDOLPH,
C. M. RANDOLPH,
DORA LAMBETH.

On the face of these papers it is clear that the contracting parties purchasing were Fannie B. Randolph and Dora Lambeth; they also were the parties mortgaging, and that throughout the transaction C. M. Randolph was entering into no contract or semblance of a contract or mortgaging or seeming to mortgage any property in which he had a shadow of interest. He was assisting his wife to contract and mortgage, and he was incurring no liability whatever to anyone. He was the agent of his wife and her sister throughout the transaction. He was doing what was absolutely

indispensable under Louisiana law to enable his wife to contract by authorizing and assisting her so to do; but he was not contracting for himself or for his wife any more or less than he was contracting for Dora Lambeth. She needed no authority from anyone. She was perfectly and entirely *sui juris*. But Mrs. Randolph was quite incompetent to do any contracting whatever without the concurrence of her husband in the act. "The wife, even when she is separated from her husband, cannot alienate, grant, mortgage, acquire, either by gratuitous or incumbent title, unless her husband concurs in the act or yields his consent in writing." (Louisiana Code, Article 122, C. N., 217.)

The wife's right to alienate her separate property with the authorization of her husband is unlimited; her only recourse is "in case it should be proved that the husband has received the amount of the paraphernal property thus alienated by his wife, or otherwise disposed of the same for his individual (particular) interest, the wife shall have a legal mortgage on all the property of her husband for the reimbursement of the same." (Louisiana Code, Article 2390.) No such charge is made against him. But the judge below, and all the antagonizing counsel, exclaim victoriously, "Look at Louisiana Code, Article 2398," reading; "The wife, whether separated in property by contract, or not separated, cannot bind herself for her husband, nor conjointly with him, for debts contracted by him before or during the marriage."

We are thus brought again face to face with the far-famed law of Toro and the case of *Bein* v. *Heath*, 5 Howard, 229. But here we have no debt or contract of her husband. To contend differently would be a mere perversion of the instruments executed, and fasten a fraud on the deceased, C. M. Randolph. If he has wronged anybody he would be responsible;

but he has evidently acted throughout this business *in uberrima fide*. However, in further support of the unfounded allegation and want of proof of any community existing in this transaction between Mr. and Mrs. Randolph, the proceedings in the succession of Mr. Randolph are amongst the records offered in evidence; *int. al.* the wondrous accounts of Mrs. Randolph's administration of the community alleged to exist between her deceased husband and herself. It cannot be seriously contended that the appellants were any parties thereto or bound in any way thereby. Even whilst insisting that the debt for which the mortgage was given was a community debt, which not only seems untenable, but in view of the note and the act, in our opinion, an entire perversion of the intent and meaning thereof, the lower court holds that Mrs. Randolph has ratified the same "with requisite knowledge." It is not attempted to assail the good faith of the deceased husband. He was the honest agent both of his wife and sister-in-law; and not in any way or shape the purchaser of the mules, etc., for his own account. By the note and mortgage he made no contract with appellants. He was a necessary witness to both note and mortgage, but no party to the contract individually.

*Third.* As to the note and mortgage being only and strictly joint between Mrs. Randolph and Mrs. Stark, nee Lambeth, under Louisiana laws, "of which each only owed a moiety."

Here the judicial attention below is directed to the note only, altogether overlooking the authentic act, making a part thereof. In form, under Louisiana law, the note, impliedly, is a joint note, but it must be construed with the act. Even if the note were made expressly joint, which it is not, it would not express the whole intention of the parties, for the identity of the

note and mortgage as one instrument and one contract has never been destroyed. The note is in fact and in law, both by Louisiana statute and the commercial law of the world fixing this character upon it in form a joint note, but it is also something more than joint. It is a joint and several note. This results from the words in the act of the mortgage, the promisors (Fannie and Dora) personally appeared before the notary, and "who severally declared that they are indebted unto Mrs. Rosetta Groves," etc., etc. It seems to us that language could not more plainly express a joint and several obligation; that each obligor owed the entire debt, just as completely as if each had given her own promissory note for the amount of the debt, say $8,970.12. The words are clear and explicit, and lead to no absurd consequence (Louisiana Code, 1945) and convey most clearly to our minds the common intent of all the parties who so treated the transaction continuously from the date of the act and note down to the institution of this suit, (Louisiana Code, 1956) that is, for more than eighteen years.

Now, after this lapse of time from date of act and note, 1 January, 1868, to the filing of this suit, May 29, 1886, can these legal relations so long established and evidenced by an act and note, and so many subsequent payments, each equivalent to a confession of judgment under Louisiana law, and on which executionary process under articles, Louisiana Code of Practice, 732 and 733, might issue for the seizure and sale at once of the property mortgaged—can these legal relations be changed *post litem motam* to the great prejudice of the appellants? How can it be declared that appellants' rights now are only that Mrs. Randolph's obligation is to pay one moiety of the debt, when she confessed judgment years ago she owed the the whole? Why should she come now and under

any pretence whatever of fraud, trust or error, ask to have revoked partial payments, made by her and imputed by the creditor to the whole indebtedness with her knowledge and consent, and in strict accord with her obligation, but now made by the decree herein to enure to her advantage, to the prejudice of her own sister, who has never been heard, and of these appellants? And all these payments are proved by Mrs. Randolph's own confessions of judgment by authentic act contemporaneous with the payments, and an acknowledgment that there was due on the note and mortgage the very amount claimed herein by the appellants with interest at eight per cent. from 29 May, 1886, to wit, $4,873, amounting at institution of this suit to $5,743.46, the deposit made in court by the complainant.

We may now refer to the reasoning of the court below in establishing the note as a joint note. There are three opinions in the case; the first on record (p. 151,) in which the Court says: "And being further of the opinion that the obligation into which she entered was the joint obligation of the respondent, Fannie B. Randolph and Mrs. Stark, of which each owed a moiety," etc. This is followed in the second opinion (record, p. 157): "I find the question settled by our Supreme Court in *Walton v. Lizardi* (15 Louisiana Rep., 588,) and in *Erwin* v. *Green* (5 Rob., R. 70.) These cases held that when two or more persons unite in a mortgage upon land held by them in indivision to secure the payment of a joint note that each only mortgages his own interest to pay his own proportion of the note. The reasons the court give are that solidarity is never presumed and that the mortgage, being an incident of the debt, is controlled by it. There has been, therefore, no error on the part of the court in holding that each mortgaged only for her own portion of a joint debt."

But it is too clear for argument that if the note is a joint and several note and the debt a several and not a joint debt these authorities are not applicable. The assumption that the debt is only joint leads the court to the judgment rendered in this case.

But there is no foundation for either assumption. The note is a joint and several note, as we have demonstrated, and not merely joint, and we also assert that the legal obligation of Fannie and Dora is a solidary obligation on their part towards the appellants; that an obligation *in solido* is precisely equivalent to an obligation joint and several, and farther that the obligation and mortgage of these ladies is indivisible and that the court below was utterly powerless to divide it as it has done; and farther that as the mortgage was indivisible and a true hypothecation it was in law and fact *totum in toto et totum in qualibet parte.*

The citations from 15 Louisiana, 588, and 5 Rob., R. 70, utterly fail to support the judge's theory. In the first, *Walton* v. *Lizardi,* the obligations were several and divisible and this intention was the common intent of the parties. They bought certain distinct portions of a square of ground and gave their several notes for these distinct portions. Our case is the very reverse, and the common intent, which must govern in all these cases, equally clear in both.

The second quoted case, *Erwin* v. *Green,* (5 Rob. Rep., 70,) enlarges and explains the first. Syllabus: "Defendants purchase jointly certain lots of ground, giving their separate notes, each for one-third of the price." This is very plainly not our case.

Both these cases quoted by the judge are decided "on the real intent of the parties." In both the notes were several. In our case every possible contention has been raised, but by no one that the note in suit is a several obligation only.

And note particularly what the Court says on p. 74 of 5 Rob., *Erwin* v. *Green*: "Here the contract in its origin was perhaps such as to come under the application of the legal rule of the indivisibility of the mortgage, and we are free to admit that had the sale been passed to the three purchasers without any division of the price and without any distinction of interest the mortgage might perhaps have remained entire and unaffected until the payment of the whole price; but the parties thought proper to establish in the act the distinct amount to be paid by each and to specify and designate their respective portions of interest in the property; this was accepted by the vendor; the debt was divided and the respective notes of the purchasers were taken by him accordingly." This seems to us to accord perfectly with the views above expressed.

In the same, 5th Rob., R., but on page 47, will be found the case of *Gordon* v. *His Creditors*. The Court says: "In the present case not only each purchaser acquired an undivided half of the lots, but each became liable for the payment of the whole price, either as drawer or endorser, and the whole property was mortgaged to secure the payment of the whole and every part of the price."

It also appears to us that the adoption by the court below of the doctrine that "solidarity is never presumed," and that the mortgage being an incident of the debt is controlled by it, is quite inapplicable here, and loses sight of the whole doctrine of *in pari materia*. (Louisiana Code, 17.) "Laws upon the same subject-matter must be construed with a reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another."

Now, this doctrine of solidarity is found in Louisiana Code, 2093. "An obligation *in solido* is not pre-

sumed; it must be expressly stipulated. This rule ceases to prevail only in cases where an obligation *in solido* takes place of right by virtue of some provision of law." Hence, the word "solidary" must not be construed too strictly, for there are degrees of solidarity; it may be expressed, and then it is perfect; it may be implied or imperfect.

Now one provision of Louisiana law is Article 2161, Louisiana Code. "Subrogation takes place of right." * * * For the benefit of him who, being bound with others or for others, for the payment of the debt, had an interest in discharging it." This is the present case. It cannot be denied that Mrs. Randolph is bound with Mrs. Stark. They are both principal debtors. They severally declare they owe the whole debt. They never disputed it for eighteen years; and till this suit was brought, always acted on its truth. The note and mortgage constitute an indivisible obligation. "Everyone of those who have conjointly contracted an indivisible obligation is liable to (for) the whole, even though the obligation was not contracted *in solido*." (Louisiana Code, 2113, 1st Evan's Pothier Oblig., p. 151, paragraph 322, *et seq.*) They bind it fast by an indivisible security, the mortgage. The decree herein annuls the contract and destroys the mortgage. The contract and the mortgage constitute but one transaction. "It has, as a legal agreement, the effects of law upon the parties." (Louisiana Code, 1945.) "The mortgage is in its nature indivisible, and prevails over all the immovables subjected to it, and over each and every portion." (3282, *Ibid.*)

*Fourth.* The court, from the alleged principles of law, draws a conclusion equally untenable as that of the community debt, the strictly joint, and the ratification theory "under our law," as the court contends: "And that there is by law an imputation of the pay-

ment, which the obligors have severally made to the extinguishment of the moiety of the debt which they respectively owe, and in order to ascertain how much is still due and owing from the respondent, Mrs. Randolph, it is ordered that the matter be referred to Henry J. Carter, who is made special master herein to make up and state the account, showing how much was due as the moiety of the defendant, Mrs. Randolph, and how much has been paid by her, and to carry out this order he is hereby authorized upon due notice to take additional evidence, if any shall be required." (Record, p. 151, First Opinion.)

On an application for a rehearing a second opinion was filed (record, p. 157, foot), embracing two points; first, declaring appellants' mortgage divisible, which has been already treated; and second, that "payments were made by one joint debtor on a joint debt. Nothing was done by her to show that she paid except for both debtors." The first of these propositions is clearly erroneous, for in the authentic act she executed she acknowledges she owed the whole debt. The second is a fact, and perfectly true. But the court continues: "Although equity allows her to insist upon the imputation of her payments to her own portion of the debt"——. Here, in order to justify its action in giving these instructions to the special master, the court asserts a proposition of equity which to our minds is totally unfounded and inadmissible, and manifestly inconsistent with the fact just admitted. Whilst our contention is that Mrs. Randolph never had either in law or equity any right to insist upon any such imputation of payment, yet if for the sake of argument we admit that the debt was a joint one, payments they voluntarily made upon it could never be recalled, not only by Louisiana law, but by universal law. What was the common intent of the parties? Was not the

interest to be first paid? Why fix the exact amount by confession of judgment at $4,873 on March 5, 1884, with interest till paid? "The debtor may impute any payment he makes. If he do not, the creditor may. If neither do, the law does for them; and in all cases the imputation takes place in one of these modes at the time of payment. It cannot be made afterwards. Where the imputation is made by the creditor, the debtor is always protected against surprise or fraud."

*Bloodworth* v. *Jacobs*, 2 La. Ann., 24; *Adams* v. *Bank of Louisiana*, 3 La. Ann., 351.

If the common intent is to govern, and that existed from 1 January, 1868, till this suit was brought, it is hard to see where and when any surprise or fraud on the part of the appellants has come into the mutual legal relations. We think no authority can be found for any such principle of equity jurisprudence that asked us to grant and admit on mere assertion. The whole suit is a *contrived* interpleader against the whole body of the civil law, and all equity jurisprudence as well; and all the surprise and all the fraud are absent on the part of the appellants and present on the part of the appellees, as we shall duly prove.

In this same interlocutory decree, page 158 of the record, it is farther said in addition: "Although equity allows her to insist upon the imputation of her payments to her own portion of the debt, it involves an examination of facts which make the presence of the other debtor as a party proper though perhaps not strictly necessary," etc. * * * "Let Mrs. Stark be made a party defendant," etc.

Now, if the contract be strictly "joint" and nothing else but "joint," Mrs. Stark was beyond all doubt a necessary party to the bill. Article 2,080, Louisiana Code, says: "In every suit on a joint contract, all the

obligors must be made defendants." Can anything be clearer than this? She has been made a party; she has come in and demurred. Her demurrer has been sustained, "and the complainant not insisting upon her being retained in the case," (record, p. 167) "the complaint as to her be dismissed." For his own purposes, therefore, it is clear that Mrs. Stark has been intentionally omitted by the complainant as a party to this suit, and not necessary to this "accounting." What possible need of another accounting when the amount due has been ascertained, settled and confessed ever since March 5, 1884?

The laws of Louisiana accord to those who stand in the legal relations of appellants to appellees a two-fold remedy, a personal action on the note or a hypothecary, a real action on the mortgage, which latter action "the creditor brings against the property mortgaged, which has been hypothecated to him by his debtor, in order to have it sold for the payment of his debt." (Code of Practice, Louisiana, Article 61. Appellants' authentic act begins "with the confession of judgment." (Record, p. 39.)

Now we submit, that, as these two modes of procedure to collect a debt secured by mortgage are entirely independent of each other, and cannot be properly cumulated, the proceedings in this suit are strictly hypothecary as between Mrs. Randolph and the appellants. In this view her claim for relief, either at law or in equity is barred by the lapse of time, if she ever had any legitimate claim to relief, which is expressly denied.

The first payments made on the note and mortgage took place prior to 28 April, 1873, when "after a careful computation of interest and deduction of partial payments made at different times to Mrs. Rosetta Rhea by the drawers of said note, there remains due on the

same at this date, the sum of $9,577.34." (Record, p. 140.) Is there any fraud or error here? Is there now any possible ground for disturbing this acknowledged account? Can Stark, by his evidence, shake the validity of his own acts? Can the appellants complain of Olivier's conduct? *Qui facit per alium facit per se.* If Mrs. Randolph's contentions were true, her action would be against her brother-in-law, her sister's husband, but the appellants most clearly have nothing to do with their legal relations.

The question of subrogation becomes pertinent here. The first act of subrogation was to Nalle & Co. $2,000, on the payment of this amount to appellants. In all these transactions it may be admitted, *a. g.*, that the funds paid were the strictly and solely "joint" funds of Mrs. Randolph and Mrs. Stark, but not to the knowledge of the appellants. The funds paid on account of the note were all treated by the recipients as joint and several funds, and were imputed first to the payment of the interest on the debt, and then to the reduction of the principal. (Louisiana Code, 2164.) "The debtor of a debt which bears interest or produces rents cannot without the consent of the creditors, impute to the reduction of the capital any payment he may make, when there is interest or rent due. Every payment which does not extinguish both the principal and the interest must be imputed first to the payment of the interest."

Now, the note in question has been running along on this principle all these years, and the last extension was to March 5, 1884, on an admitted amount of principal for four years of $4,873. Interest at eight per cent., which interest yearly amounted to $389.84, was paid as per note on p. 113, and act on p. 146 for one year's interest in advance by G. W. Sentell, subrogee, on 28 April, 1880. Another payment $389.84 in ad-

vance to March 5, 1882, by the same parties. A third payment of $389.84, May 12, 1883, for one year to March 5, 1884, by same parties; all for the account and with the moneys and credits of Mrs. Fannie B. Randolph, with her knowledge and consent and approval, as we proceed to show.

As to the appellants, their mortgage covered all the property originally encumbered belonging to the two sisters in indivision. It still remains, as to them, in the same state, because the partition between the two sisters was an entire nullity as to the appellants, and is so still, for the mortgage first established still exist unaffected by anything that has yet been done. The appellants were no parties to the partition, which in no wise altered the nature and effect of the prior mortgage of an undivided part thereof. *Erwin* v. *Orillion*, 6 La., (Curry) 214.

And this prior mortgage exists since the Sheriff's sale in the same force and virtue as originally, until the appellants' claim be paid and satisfied as to both Mrs. Randolph and Mrs. Stark, *i. e.*, as we contend, until paid in full, even if a sale of the property over again be needful to effect satisfaction.

But, at that Sheriff's sale brought about by complainant, who was the plaintiff in the execution and the purchaser at the sale, the mortgage certificate required by law, exhibited appellants' mortgage as priming the mortgage granted separately by Mrs. Randolph and Stark to Johnson & Goodrich, to which the complainant's firm had been subsequently subrogated. They got credit on the writ for $5,320.81, and retained in the hands of the purchaser, G. W. Sentell, $6,037.12, being the Rhea mortgage, prior and special, $4,873, interest on same to date of sale, $1,164.12, (record, p. 135) "and still rests on the property." (Sheriff's return, record, p. 65.)

| | |
|---|---|
| Retained in their hands, . . . . . | $6,037 12 |
| But G. W. Sentell only tenders in court, as due on appellants' mortgage. (Record, p. 6.) . . . . . | 5,743 46 |
| Leaving this balance in his hands not accounted for, . . . . . | $ 293 66 |

On what pretext did G. W. Sentell & Co. retain this amount? And why did the complainant make no mention of it?

Here the dates become important.

Sentell & Co.'s judgment against Fannie B. Randolph is dated 24 December, 1883. (Record, p. 58.)

9 January, 1884, *Fi. Fa.* issued. (Record, p. 63, return on p. 64.)

26 January, 1884. Advertisements made of the property, some of which was still in indivision. (Record, p. 30.)

1 March, 1884. Appraisement showing this fact. (Record, p. 60.) The sheriff's sale same day. (P. 65.)

The suit seems to have gone to judgment without any defence interposed by Mrs. Randolph.

The complainant is a sham "stakeholder" throughout and colluding with W. B. McLean as liquidator and executor—both manifestly joining their forces to obtain either for themselves or Mrs. Randolph an unconscionable, inequitable advantage over the appellants. For their suit, No. 7049, (record, p. 50) their judgment, their execution, their purchase under it, manifestly for the account of both, their dealings with the Groveses all show it. The appraisement was for $18,000, and Mrs. Randolph waived notice of the appointment. (Record, p. 65.) The property had to bring two-thirds of its appraisement under Code of Practice, Article 680. The appraisement was for $18,000, and this was the cash value of the property.

(Code of Practice, Article 673.) It could not be sold under two-thirds of the appraisement, *i. e.* for less than $12,000. "Such sales are considered, both at law and in equity, as sacrifices of property." (*Cross* v. *Allen*, 141 U. S, 538.) It brought just $2 above the two-thirds of the appraisement. A bid for the exact debt and the waiving of the notice to appraise and this very suit show that it was rather an arrangement of the debt than a forced sale of the property. (*Esnault* v. *Cooley*, 16 La. An., 165.) The completely solidary obligation between McLean and G. W. Sentell towards these appellants cannot for a moment be denied. "He who causes another person to do an unlawful act or assists or encourages in the commission of it is answerable *in solido* with that person for the damage caused by such act." (Louisiana Code, 2324.)

The amount tendered in this bill to appellants is $5,743.46, being for principal, $4,873, with interest thereon at the rate of eight per cent. per annum from March 5, 1884, "aggregating $5,743.46 at this date," the filing of the bill, May 29, 1886. This is exactly eight per cent. for two years, two months and twenty-four days, $870.46 within a small amount. But the amount retained for interest in the sheriff's sale was $1,164.12, being very nearly three years' interest on the capital of $4,873.

Of this amount no account is given. Sentell detains it, asking at the same time your honors to affirm the Master's report, who calmly sets forth that the moneys paid in renewal of the note shall be divided and credited, one-half of this interest paid in advance to each drawer of the note. It must be noted that appellants' suit at law was brought 1 April, 1886, (record, p. 46) and the present bill in equity subsequently on May 29, 1886, and the amount claimed in the Groves' *assumpsit* was adopted exactly in the amount deposited in court by complainant.

But the last payment made by Sentell & Co. on the note was on 12 May, 1883, to renew the note; it was a payment with subrogation *pro tanto*, a continuation of the original credit, coupled with a binding obligation to pay the debt as it then existed; a solemn acknowledgment made in the original acts of subrogation, "that on a distribution of the proceeds of said property mortgaged—the balance due Mrs. Rhea on said promissory note (the amount specified in both acts) shall be paid in full." (Record, p. 145, and again on p. 147.) It was on these admissions, equivalent to two solemn confessions of judgments under Louisiana law, that the action of *assumpsit* was brought on the law side of the court below.

We submit, confidently, that under the operation of these facts neither Sentell nor McLean have the slightest defence to our claim for relief in this case.

Sentell and McLean are but one person. They bought the property jointly and severally, and paid for it with joint and several funds. If they are really "stakeholders," and honest, they can have no interest in the result of this suit. But McLean claims, as receiver of the firm, the whole sum deposited in court, and gets the most of it, whilst Sentell's counsel is awarded $250 for his services. Can it be possible that this court can be seriously asked to draw a distinction between these two litigants in their effort to benefit themselves in this interpleader suit?

But appellants' action of *assumpsit* has been enjoined and your Honors have full equity jurisdiction to dispose of the case on the facts, with all the parties, including Mrs Stark, as appellees.

Does Federal equity require the application of any different principles than those we have urged to be those of civil and Louisiana law in this case? And we proceed to show that it does not. The two sys-

tems of jurisprudence here entirely concur. We utterly deny that "our law" is different from Federal equity law.

Reminding the court that this proceeding is peculiarly a bill of interpleader growing out of a sale of mortgaged property and a contest to whom belongs the proceeds thereof, we find that—

*First.* The note and mortgage are construed together, as one instrument, when they were made at the same time and in relation to the same subject, as part of one transaction constituting one contract. They explain each other so far as the indebtedness is concerned.

*Second.* The note and mortgage evidenced a debt-bearing interest from date. The interest is the thing the mortgage was made for. (1 Jones on Mortgages, Sections 71, 73.)

*Third.* Equity regards substance rather than form, and enforces the actual intent of the parties, if lawful and just. (Jones on Mortgages, Section 101.)

*Fourth.* The appellants have made Mrs. Stark a party to this appeal. But she is, evidently, no necessary party here. She has been studiously and astutely omitted from the bill of interpleader. Your honors are not to see into the present legal relations existing between Mrs. Stark and Sentell and his firm, who are actors herein, jointly and severally throughout, and deeply interested as interpleaders and plaintiffs, for though the deed of sheriff's sale is made to Sentell individually, the proceeds of sale all went to the credit of the firm, and all the other acts throughout of Sentell were made for the firm and in the firm name. If our intervention herein be construed by the pleadings, the case is an hypothecary action,

forced upon us by Sentell & Co., for the only relations existing between them and the appellants are those of mortgagor and mortagee, resulting from their purchase of real estate encumbered still by our prior mortgage of property belonging to Mrs. Randolph and Mrs. Stark in indivision.

Their subsequent partition of it did not affect our mortgage rights in any way. They were in full force nd virtue when the sale under foreclosure was made. his sale was approved and ratified by our *assumpsit* against the purchaser. That suit is merged in this. And it now appearing that the two parties, Sentell and McLean, being identical, acting together herein to benefit themselves or Mrs. Randolph or Mrs. Stark, they are liable *in solido* for the full amount of our claim, with interest, now amounting (January 1, 1894) to over $9,000.

The pleadings of the appellees herein impliedly assert a charge of constructive fraud against these appellants, and this is re-echoed in the answer of Mrs. Randolph (record, p. 12), supplemented by an additional answer on p. 160; but the court will not fail to notice that neither of these voluminous documents have been supported by her oath or her signature.

We have shown that under the hypothecary system of Louisiana the sheriff's sale did not and could not *per se* operate the cancellation of appellant's mortgage on Mrs. Randolph's property, and that it still exists and primes Sentell & Co.'s mortgage on Mrs. Stark's property. So far as these appellants are concerned, the allegation in the bill of complainant that the property mortgaged by these ladies has become their "individual property" by the alleged partition between them is altogether untenable. So that in fact, the bill has for object and aim to pay the debt due by both these ladies and obtain a release of both mortgages on

the payment of $602.14, when over $9,000 is now due. If in the Federal courts "subrogation results not from the contract but is nevertheless the execution of their intentions," it is quite impossible for us to work out successfully the argument of the lower court in this case *Hampton* v. *Phipps*, 108 U. S., 263; *Keller* v. *Ashford*, 133 U. S., 610.

If the appellants had been parties to the partition subsequent to their mortgage and had assented and especially made their contract and mortgage a divided contract and mortgage; in other words, made both strictly joint, and the ladies responsible for one-half of the price of the mules, then there might be some show of argument on the appellant's recourse on two funds for their payment. But there was never but one fund, one mortgage, and it rested and still rests upon property in a state of indivision, until the payment of appellants' claim in full.

As to the bill of interpleader, it is in direct opposition to all the principles of equity jurisprudence.

*First.* The debt or duty claimed is not the same, but totally different. Our debtors are bound to us jointly and severally; Mrs. Stark and Mrs. Randolph are bound to Sentell & Co. separately.

*Second.* That plaintiff has incurred no independent liability to either party. The court awards his commercial firm a very large part of the money he deposits in court, no part of which deposit is his own property exclusively.

*And Third.* That he claims no interest in the matter. He can hardly be called an upright stakeholder. He is directly charged with collusion in this matter together with his firm. And the proof is in the vari-

ous authentic acts in this record, signed by George W. Sentell, acting in behalf of his firm.

Adams' Equity * 204, and notes;
Story's Equity Pleadings, Section 291, p. 237, *et seq.*;
2 Story's Equity, Sections 806 to 824.

The bill is very singular and "suggestive." 2d Vesey, Jr., 304 to 313, *Dungey* v. *Angove*. And the court below awards $250 to the complainant's solicitor, without apparently perceiving that the money deposited by the complainant was the sole property of the appellants, and the complainant himself our trustee. Every stakeholder, "whatever that may be," is a trustee.

In re *Hancock's Trusts*, L. C., 1 Ch. D., 616.

An equity maxim runs: "Equity looks upon that as done which ought to have been done." Clearly it was both the legal and moral duty of the complainant, under his subrogation to pay over at once the entire amount of the appellants' mortgage, whilst, in fact, he converted it to his own use from the date of the Sheriff's sale, 10 January, 1884, to 29 May, 1886, date of suit and deposit of the money in court.

When the case of *Dungey* v. *Angove, ut supra*, was opened, the chancellor said: "The parties interpleading must each in supposition have a right to the same demand." "A first mortgagee is not to be postponed to a second merely because he has not possessed himself of the title deeds of the estate; he can only be postponed where he has been guilty of fraud or gross negligence."

*Colyer* v. *Finch*, 5 H. L. C., (Clark) p. 905.

The principle of equitable estoppel may likewise be invoked.

The assignors of the appellees (Sentell and McLean) precluded themselves by their being subrogated, *pro tanto*, to the rights of the appellants. These assignees could take no greater rights than their authors, although the mortgagor was no party to the assignment.

*Walker* v. *Jones*, L. R., 1 P. C., 50.

See Bigelow on Estoppel, p. 50, *et seq.*, commenting on *King* v. *Hoare*, 13 Mees. & W., 494, and straightening out the entire doctrine of joint and several obligations, and harmonizing them with the civil law.

There can be no doubt, therefore, that in the light of these authorities the old Common Law and Modern Equity accord in all respects with the true law of Louisiana in this case, and in the conclusion that Sentell, McLean and Mrs. Randolph are all tort-feasors and bound jointly and severally to these appellants for the full amount claimed of them, and that the distinction between "our" law and "their" law has no existence.

A bill of interpleader requires the fullest good faith on the part of the complainant. No remedy is more liable to abuse by collusion between parties and hence it is that the practice of courts of equity universally requires an affidavit to be appended to the bill that the complainant is not acting in collusion with either of the defendants, but files the bill of his own accord.

Story's Equity Jurisprudence, Section 809.

It is essential to such a bill that the conflicting claims of the defendants be of the same rank or for the same right and not merely between some person to whom the complainant owes the duty of paying the money over and some third person who may assert an adverse title. For this reason an agent cannot file a bill of interpleader against his principal and a third

person. A tenant cannot file a bill of interpleader against his landlord and a third person. The reason is that the agent cannot deny the title of his principal, nor the tenant that of his landlord, and that to allow the doctrines of interpleader to be applied to such cases would only create and foster dishonest collusion on the part of persons bound to account to others with third persons to whom they owe no such duty.

Every mark of good faith is wanting to this bill of interpleader on the face of it. The sale was on a second mortgage. It was open to such second mortgagee to do one of two things at this sale; to buy the property outright, free from the claim of the first mortgage, by paying the amount thereof to the first mortgagee, or to buy it subject to the first mortgage, leaving the same still remaining on the property. Common justice and the principles of equity plainly required one of these two causes to be pursued. He chose to do neither. He first obtained the property by buying it in free of the claim of the first mortgage, and retains the amount due on said first mortgage in his hands. This is on the 1st of March, 1884. From this time there is an unexplained delay until April 1, 1886, a period of more than two years, when he is sued by these appellants for the amount. He is next warned by counsel for Mrs. Randolph not to pay the money over to these appellants, and then by the liquidator of his own firm and testamentary executor of his own partner. Hereupon he goes into the Circuit Court with a bill for an injunction against these appellants from proceeding with their suit at law, and asks that the respective defendants be required to interplead. Two of these defendants, the Groveses, appellants here, are the first mortgagees, the payment of whose mortgage he necessarily assumed in becoming the purchaser of the prop-

erty, and this is, indeed, explicitly shown by the sheriff's deed. (Pp. 30, 31.)

It thus closely approaches the case recognized by all the authorities as one in which bills of interpleader are not allowable, of bills by an agent against his principal, or by any person in privity with another against that other and a third person.

When to this fact is added that another of the defendants was the liquidator of his own firm, and executor of his own partner, the bill is stamped upon its face as a fraud and a sham, an abuse of the process of a court of equity, and a flagrant violation of the rules laid down by all the authorities on the subject of bills of interpleader.

One of the first requisites of a bill of this character is that the complainant must have no interest himself in the result of the suit, but must be entirely indifferent between the defendants. *Killian* v. *Ebbinghaus*, 110 U. S., 568.

Tested by this rule the bill as a bill of interpleader conspicuously fails, and should have been dismissed by the court on demurrer, and these appellants permitted to proceed with the prosecution of their remedy at law. The demurrer, however, having been overruled, testimony having been taken, the case having been referred to a master, a decree having been entered, and the whole case being now before this court, by whom it can most appropriately be settled in one proceeding, it is not now asked that upon a reversal the case be remanded with directions to dismiss the bill, but that the decree be reformed so as to accord with the rights of the parties.

The point is material too, in view of that portion of the decree of the court below, page 167, which adjudges to the solicitor of the complainant a fee of $250 for services in filing the bill and conducting the proceedings.

Upon a bill filed as was this, in evident bad faith and collusion, and after a period of unexplained delay, there can he no excuse for saddling the fund with the expenses of litigation conducted not for the benefit of those rightfully entitled to that fund, but solely to serve the private purposes of the complainant in the suit.

What was said in *Hobbs* v. *McLean*, (117 U. S., 567, 582) is here appropriate: "When many persons have a common interest in a trust property or fund and one of them, for the benefit of all and at his own cost and expense, brings a suit for its preservation or administration, the Court of Equity in which the suit is brought will order that the plaintiff be reimbursed his outlay from the property of the trust or by proportional contribution from those who accept the benefits of his efforts. See *Trustees* v. *Greenough*, (105 U. S., 527,) where the subject is discussed by Mr. Justice Bradley and the cases cited, and *Central Railroad Co.* v. *Pettus*, (113 U. S., 116.) But where one brings adversary proceedings to take possession of trust property from those entitled to it in order that he may distribute it to those who claim adversely and fails in his purpose it has never been held, in any case brought to our notice, that such person had any right to demand reimbursement of his expenses out of the trust fund or contribution from those whose property he sought to misappropriate."

We, therefore, respectfully submit that the decree in this case be reversed and that the appellants have a decree in their favor, as prayed for in their pleadings, with costs, counsel fees, interest and damages.

CHARLES W. HORNOR,
GEORGE A. KING,
WILLIAM S. BENEDICT,
*Solicitors for Appellants.*

Washington, D. C., March 1, 1894.

FILED.
MAR 1 1894
JAMES H. McKENNEY,
CLERK.

# SUPREME COURT OF THE UNITED STATES.

No. 278.

OCTOBER TERM, 1893.

MARTHA GROVES ET AL.,
*Appellants,*

*versus*

GEO. W. SENTELL

AND

MRS. FANNY RANDOLPH ET AL.,
*Defendants and Appellees.*

BILL OF INTERPLEADER.

E. T. MERRICK, SR.,
*Counsel for Mrs. Randolph, Appellee.*

L. GRAHAM & SON, PRINTERS, 44-46 BARONNE ST.

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The defendant and appellee, Mrs. Fanny B. Randolph, being unable to take an appeal on her own account, finds herself compelled to content herself with a defensive position for so much as the lower court gave her.

But the *law* of Louisiana gives her (she having been under coverture when the contract was made) more than she was awarded by the court; and that law is appealed to to maintain the decree and show that she was entitled also to the balance of $602.14 made by the sale of her property, reported by the master. (Rec., p. 154.)

The error to the prejudice of Mrs. Randolph on the merits consisted in charging her as mortgage debtor in the fund for one-half of $8970 and interest, making $5307.32, when she was bound only at the outside for one-fourth of $8970 and interest, which she had greatly overpaid, she supposing the mortgage was binding, when the only obligation she incurred grew out of the settlement of her deceased husband's estate.

For the perfect understanding of this case, which depends upon the application of legal rights so different from the common law, it will perhaps aid the court to recall its attention to the origin of the Louisiana law, only occasionally examined at Washington, affecting these particular questions.

When O'Reilly took possession of Louisiana in the last century for Spain, the French laws were abrogated and the Spanish laws for the Indias were substituted and enforced. The treaty of Il Defonso did not change them. When it became necessary after the cession to codify the Spanish laws so that they could be understood by the Spanish, French and American citizens of the territory, it happened that a *projet* of the Napoleon Code fell into the hands of the compilers, Messrs. Moreau Lislet, and Brown, and where the admirably formulated articles of the French Code coincided with the Spanish law in force in the territory, they were adopted and translated into English, sometimes imperfectly, but the French text of the Code of 1808 being of equal validity with the English text was used to correct such errors.

As in the Roman civil law countries, the maxim *stare decisis has less* weight than in England and the rest of the United States, our courts have paid great attention to the commentators on the corresponding articles of the French Code, and even the decisions of the Courts of Cassation on the same have had great influence on the interpretation of parts of the Louisiana Code.

The Spanish law partly clothed in a French garb and mostly contained in the Territorial Code of 1808 and the statutes was the law of Louisiana until the repealing act of 1828 cut off all Spanish laws not re-enacted. This is the reason that our courts are charged with the judicial knowledge of the Spanish law, while the much more familiar laws of France have to be proved in court when they are invoked as the basis of legal rights. The Civil Code of 1825 was the law in force when the rights of the parties in this case accrued.

The following article of that code, viz., "Art. 2412. *The wife whether separated in property by contract or judgment or not separated can not bind herself for husband nor conjointly with him for debts contracted by him before or during the marriage,*" is not in the French Code and was taken from the 61st law of Toro. The same article is carried into Art. 2398 of the Code of 1870, and has never been changed. The special law authorizing a married woman to borrow money for the benefit of her separate estate under a decree of court, Acts of 1855, 554 Rev. Stat. 1870, p. 773, Sec. 2081, being without application.

As to the Civil Code on *rights* of MARRIED PERSONS with corresponding articles in the Napoleon Code we cite: "Art. 2369. Every marriage contracted in this State *superinduces of right* partnership of acquets and gains if there be no stipulation to the contrary." In original French text the words are "*Societé on communauté.*"

ART. 2371. "This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment *either of right* or in fact of the produce of the reciprocal industry and labor of both husband and wife and of the estates which they may acquire during the marriage, either by donations made jointly to them both or by purchase, or in any similar way, even

although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to and not the person who made the purchase."

The husband is the head and master of the community, and the wife has only a right to one-half of what is left after the debts are paid.

### Civil Code on Joint Obligations.

Art. C. C. 2081: "In a suit on a joint obligation judgment must be rendered against each defendant separately for his proportion of the debt or damages if the suit resolve itself into damages." * * *

"Art 2082. If one of the obligors in a joint obligation has performed or discharged his part of the obligation, although he must be joined in the suit on account of his eventual interest, he has for the repetition of his payment if the contract be disproved or annulled, yet if the contract be affirmed the defendant who has paid his proportion or performed his part shall have judgment." * * *

"There must be an express stipulation in a contract of sale to render joint purchasers liable *in solido* or as sureties for the price. Such liability can not be presumed." Kohn vs. Hall, 8 Rob. 149.

The word "essentially" used in the following articles on mortgages from the Civil Code is explained by reference to the definition in Pothier, who says: "Things which are of the *essence* of a contract are those without which the contract can not exist."

Pothier on Obligations, Part 1, Chap. 1, Sec. 3, No. 6, Paris Ed. 1835.

The following articles of the Civil Code on mortgages found in codes of 1825, 1870, and having corresponding articles in the French or Napoleon Code, are important, and will be referred to in this brief.

Art. 3249, Code 1825; Art. 3282, Code 1870, and Code Napoleon, Art. 2114:

"The mortgage is a legal right on the property bound "for the discharge of the obligation. It is in its nature "indivisible, and prevails over all the immovables subject "to it, and over each and every portion. It follows them "into whatever hands they pass."

Art. 3250. "The mortgage only takes place in such "instances as are authorized by law."

Art. 3251. "The mortgage is *accessory* to the prin- "cipal obligation, which it is designed to strengthen, and "of which it is to secure its execution."

Art. 3252. "Consequently it is *essentially necessary to* "*the existence* of a mortgage that there shall be a prin- "cipal debt to serve a foundation for it.

"Hence it happens that in all cases where the principal "debt is extinguished the mortgage disappears with it.

"Hence also it happens that *when the principal obliga-* "*tion is void the mortgage is likewise so.* This, how- "ever, is to be understood with certain restrictions which "are established hereafter."

The restrictions do not affect this case, and are in Arts. 3263, 3264, 3265, 3266, 3267 of Code 1825; Code 1870, Arts. 3296, *et seq.*

The courts of Louisiana are bound to know the geography of the State, and what occurs daily before their eyes as to the fruits of the earth and the cultivation of the soil. They are bound to know that the parish of Avoyelles, where the plantation claimed to be mortgaged is cut by the 31st parallel of latitude, and that the sugar cane is limited in its cultivation north by about that parallel; that sugar cane is propagated by laying down the cane stalks in long furrows and covering the rows with earth; that cane *planted* becomes at once a part of the realty and no longer a movable; that standing cane touched by

frost must be cut and laid horizontally at once to save it from ruin, for if the top of the cane be touched by frost a fermentation sets in and runs down the standing stalk, which is arrested by laying it horizontal; that to preserve the cane for planting it is usually laid down in the field in what is usually called "windrows," and in such a manner that it is partly protected from the frost, mostly by the large, long and rough leaves.

No orange tree ever grew (we are very sure) in the open air in Avoyelles parish. They succeed only about the latitude of thirty and below and near the gulf. The writer of this speaks as to cold from experience. For on the last day of December, 1863, traveling partly on account of his office as chief justice of Louisiana, he stopped within a few miles of the Leinster plantation at the house of a friend for that night, and in the morning he found the water in the porcelain wash pitcher in his sleeping apartment frozen solid and the pitcher cracked from top to bottom. He also has had for many years cultivated lands right on the 31st parallel.

The reason that the few sugar plantations succeed is that when the frosts come there is an abundance of willing help on the surrounding cotton plantations to cut the cane in times of danger.

The cane (called "canes" in French neighborhoods) which are held for plant cane, or seed cane, as well as that intended for grinding, is classed (it is needless to say) as movables. It can be removed to any other plantation for planting or for grinding. The preposterous pretence put forth in the lower court that the cane sold to C. N. Randolph was a growing crop, and therefore a part of the plantation, is not only disproved by the proposed mortgage (an estoppel) declaring it to be a movable, and the impossibility that any vegetation could grow during the alternating "cold snaps" during winter in Avoyelles.

Then, again, it would have cost considerable money to have ploughed the fields and planted the cane for the year 1868, and it would have placed the tenant at the mercy of the landlord, to whom it would have been a gratuity.

With these remarks, we hope the court will be better able to understand our case, which the impoverished condition of our client prevents counsel from attending in person at Washington to explain; and to correct any mistakes of counsel.

We also feel constrained to say to this high court what we were forced to say in the lower court; that the brief of the appellants in that court was filed with very grave misstatements, as though quotations of the pleadings or of facts and also misstatements of law, and we beg the court, if statement of the case on the other side shall vary from what we say, that the court will verify from the record which statement is right. As an example of how these pretended quotations were calculated to deceive, we insert an example. On page 2 of this second brief, printed in the lower court, at the bottom of the page the counsel said:

"In the answer of Mrs. Randolph, filed August 2, "1886, she says (page 3): that the note was a just note "and she is only liable for her own share of one-half "thereof, either as widow or individually."

Instead of this stultifying admission, Mrs. Randolph said in her answer (see printed Record, p. 13): "And this defendant, further answering, says that at and prior to the execution of the said pretended mortgage note and said pretended mortgage, on the 1st day of January, 1868, this defendant's property, she was a married woman, the wife of Christopher M. Randolph, and that she was wholly unaccustomed to matters of business, and knew nothing respecting her rights, and her said husband, having taken charge of her business and her interest in lands

as head and master of the community, made an arrangement with Mrs. Rosetta Groves, wife of one John Rhea, deceased, through her agent, for the benefit *of the community*, whereby certain movable property, consisting of mules, horses, etc., were transferred in fact by said Mrs. Rosetta Rhea, as heir-at-law of her husband, to the community existing between this defendant and said Christopher M. Randolph and to Miss Dora Lambeth, now Mrs. Dora Stark; *that by operation* of law then in force the pretended conveyance of said property to defendant and Miss Dora Lambeth did not and could not make the said movable property any the less community than the conveyance directly to said Randolph, this defendant's husband, nor was said property declared to be separate property. And this defendant, further answering, says that on the 1st day of January, 1868, the said promissory note, not negotiable, bearing same date, was prepared, and after being presented to this defendant for signature was signed by her with her husband and Dora Lambeth; that the said promissory note was executed in the form of a joint note, purporting on its face to bind each signer for their virile shares respectively, viz., each for one-third."

The answer then proceeds to set forth the grounds of nullity of the note.

Having quoted so much of the answer, we will state so much of the pleadings as we hope will explain the case.

## PLEADINGS.

Mr. Randolph's defence admits the mortgage in favor of Johnson & Goodrich set up by McLean, liquidator, and his right to apply the money in controversy, being the proceeds of the sale of her plantation, to the payment of her debts secured by a mortgage she had made to Johnson & Goodrich.

But she shows that the pretended mortgage of January,

1868, claimed by the Rhea heirs, was absolutely null and void because she was a married woman at the time, and incapable of binding herself with her husband, or for a debt of the community, and that at most she could only be held for such liability as she may have incurred by managing as tutrix and widow in community, and settling up the estate of her husband, and that if liable at all her liability only grew out of her administration of the estate in the probate court, and only for one-fourth of the original debt, which one-fourth she has greatly overpaid; under such circumstances that she is entitled to recover more than $5000 overpayment.

The facts are set up in the answer and amended answer, and need not be stated here, as they will be called to the attention of the court as far as need be from the proofs and evidence.

But while on the subject the attention of the court is called to AN ERROR of practice against this defendant.

On January 3, 1890, the lower court it seems *ex proprio motu* ordered a rehearing in the matter "of *the account-* "*ing as to what portion of the payments upon the mort-* "*gage note should be imputed to Mrs. Randolph*," and ordered that Mrs. Stark should be made a party. See print R., p. 158.

Mrs Stark appeared and demurred March 6, 1890, Mrs. Randolph was authorized March 15 by the court to file an amended answer with a more elaborate and enlarged statement of the defence on her behalf (printed Record, p. 164, answer 160 to 164). This was done, we may say, out of abundant caution.

To this answer the Groves (Rhea heirs) filed a paper which they called A PLEA, EXCEPTION AND DEMURRER, p. 164.

It sets out four grounds of complaint.

The FIRST might perhaps be called a rejoinder, for it restates previous allegations of Mr. Groves.

SECOND. That Mrs. Randolph and Mrs. Stark (just cited) have not fully set forth their dealings with each other.

THIRD. That after the death of Mrs. Rhea the acts between the parties can not be set aside. The prayer of this singular paper is not that the amended answer should be stricken from the record, but that "these exceptions may "be maintained to said amended answer of Mrs. Ran- "dolph and the original bill of said G. W. Sentell as far "as it relates to your complainants," etc., concluding with a sort of a prayer for general relief (pp. 164, 165). The error as to the decree on the amended answer consists in dismissing the answer on grounds not made, and, if intended, deprive it of usefulness in this case. It is on page 167, as follows: "It is further ordered, adjudged "and decreed that the objection to the amended answer "be sustained so far as it is made upon the ground that "the cause being opened solely for the purpose of mak- "ing a party defendant with reference to the accounting, "the amendments, which might under other circumstances "be treated as an amplification of the original answer, "could not be made herein, and the amended answer is "therefore dismissed."

As the grounds against the amended answer stated in the "plea, exception and demurrer" went to the whole merits of the cause, as the demurrer filed in 1886 had previously done, it must be through some inadvertence that the error of "dismissing the *amended answer*" was made. It was responded to by the decree, which answered the whole case, and there was no complaint of the amended answer taking anybody by surprise when allowed by the court, on verbal motion, in open court, with the counsel of the Groves present, nor afterward. If treated as an exception to the answer, it points out no particular important thing which the Groves by any pleading could require Mrs. Randolph to answer.

See Demurrer, Printed Record, page 11.

Stafford vs. Brown & Brown, 4 Page Chy. 88.

A plea is equally out of place, and if the demurrer has any force it must be taken as an answer to a supposed cross bill, and admit the facts of defendant's case, as stated in the amendment.

As TO THE REPORT of the *special master* made the basis of the decree, the appellants, the Rhea's heirs, never made any *objections* before the special master, on whose report the decree is based (see Story vs. Livingston, 13 Peters R. 359), and the paper subsequently filed by their solicitor found on P. R., p. 156, points out no matter affecting points ruled by the special master as required by the practice of this court.

## STATEMENT OF THE FACTS.

A wealthy merchant of New Orleans by the name of Lambeth died, leaving two young unmarried daughters, and two or three valuable sugar plantations named Leinster, Dora and Lucky Hit, and some other lands in the parish of Avoyelles, in Louisiana.

On the 11th of April, 1865, this appellee, then named Fanny B. Lambeth, married Christopher M. Randolph (Print. Rec. 66). This young lady was almost shut out of the outside world by her loss of hearing.

After this marriage the Leinster plantation was leased to one John Rhea for $4500 by the husband, C. M. Randolph, and Dora Lambeth.

It being shown, as well as presumed in law, that Mr. Randolph had the management of the interest of his wife in the plantation, he became, under the article of the code cited, the one-half owner of the $4500 revenue of Leinster for rent of 1867, and his co-partner, Miss Dora Lambeth, the other half.

In order to secure this debt to Mrs. Rhea, it seems

to have been a point to secure a mortgage on Mrs. Randolph's interest in the land, although by law (see Davidson vs. Stuart, 10 La. R. 146) she could not be bound for a community debt or a debt of her husband, a note was drawn for her to sign, dated Avoyelles, La., Leinster plantation, January 1, 1868, for $8970.12, saying: "Two years after date we promise to pay to the "order of Mistress Rosetta Rhea at the Citizens' Bank "of Louisiana in the city of New Orleans, eight thousand "nine hundred and seventy and $\frac{12}{100}$ dollars, for value re- "ceived, with interest at the rate of eight per cent. per "annum from date until paid. *Not negotiable.*

(Signed) "FANNY R. RANDOLPH.
"C. M. RANDOLPH.
"DORA LAMBETH."

This promissory note, having been given for agricultural products and there being no statement that the parties (assuming them *sui juris*) bound themselves *in solido*, would have bound each only for his or her *virile* share of the demand—that is, each for one-third of the *debt and no more*. Kohn vs. Hall, 8 Rob. 149. It evidently was a great object of Mrs. Rhea's agents to secure this non-negotiable note by a mortgage on the Leinster, the most valuable plantation (where Mrs. Randolph, her husband and Dora Lambeth lived), by a mortgage which *certainly would bind* Miss Dora Lambeth and might be thought by Mrs. Randolph to bind her also if she should not be informed of the fact that the mortgage was absolutely null, which she never was until after the astute lawyers and agents of Mrs. Rhea had, as it was supposed, woven a web around her to make a complete ratification of the void mortgage note. See printed Rec. p. 71, printed Rec. p. 74, original Rec. p. 139.

John Rhea having died Mrs. Rosetta Rhea, the widow, whose maiden name seems to have been Groves, and

claimed to be the heir-at-law of John Rhea, was anxious to sell out the mules, seed cane and agricultural implements. She had an agent in New Orleans called Vanhorn, who employed a Mr. Correjolles to effect or aid in making the sales of the property. Correjolles made out the original list of the mules and horses which were sold to C. M. Randolph from the estate of John Rhea about the 1st of Janaury, 1868. One of the horses seems to have been taken by the Freedmen's Bureau by orders from New Orleans. (See document marked Mrs. R., No. 7, p. 104 and p. 75.) This stock therein enumerated was afterward inventoried by the authority of the Probate Court of Avoyelles parish by a notary public and two appraisers with due solemnity as shown by document marked "Mrs. R., No. 1," inventory of the succession of C. M. Randolph. See print Rec., pp. 90 to 94.

The mortgage signed in behalf of Mrs. Rhea, by Mr. Correjolles, who made the memorandum, states the consideration for the note to be certain *movable property*, *mules*, *canes*, *etc.*, *etc.*, which belonged to John Rhea, and being on the Leinster plantation The term *movable* was used in the instrument several times, in order to show that Mrs. Rhea was entitled, under the Indiana law (where the carefully prepared instrument showed Rhea's "domicile" was), to *inherit*, as a Louisiana lawyer would say.

The instrument shows that the movables sold
were considered of the value of..... $13,470 12
And that Rhea owed for rent..... 4,500 00

The amount of the note..... $8,470 12

The rent was due to C. M. Randolph and Miss Lambeth, $2250 to each.

In the fall of 1868 Mr. Randolph died. On the 6th of November, 1868, under an order and commission there-

under of the District Court of the Seventh District of Louisiana, the notary public, De Generes, with two sworn appraisers and two witnesses as already said, an inventory of this movable property as belonging to Randolph's estate $2030.64 (Print. Rec., pp. 90 to 94).

Instead of requiring the community property to be sold, the Louisiana law allows, in the case of minor children, the tutor or tutrix, where they are the widow or widower in community, to acquire the property at its *appraised* value, on the advice of a family meeting, and its confirmation by a decree of the court. In this instance Mrs. Randolph, under this law, became the "adjudicatee" of the interests of the intestate, and also of the community, which is by law carried into the *administration* of his estate, at the appraisement, viz.: $2030.64. The Rhea debt against the *intestate*, with interest, was set down against estate. See *proces verbal* of family meeting, P. R. 94 and 95; petition and decree thereon, P. R. 96 and 97, P. R. 101-104.

Where *creditors* do not interpose the tutor or tutrix administer estates. Exercising this right, Mrs. Randolph, as tutrix administering the estate, filed an account of administration, in which she showed that she had then overpaid the amount with which she was chargeable ($2030.6), and after *due publication* (in the nature of a summons to creditors), required by law, the account was homologated in all its parts by the decree of the court on the 7th day of June, 1871, in open court, and the tacit or legal mortgage in favor of the *minors* was ordered to be canceled (P. R., pp. 108, 109 and 112).

This power of *administration* of the tutor is shown among many others in tutorship of minors. Scarborough, 43 An. 320, and Succession of Bourgeois, 43 An. 247.

This administration for the first time connects Mrs. Randolph with her deceased husband's debt claimed by the Rhea heirs, and raises a doubt whether it does not

bind her *individually* for the one-half of C. M. Randolph's debt as master and head of the community between him and Mrs. Randolph to the amount of one-half of the same, namely: for $2242.53 and interest thereon, and this not as a mortgagor as will hereafter be shown, but by the act of the law, which charges the widow who does any act of ownership over the community as accepting the same, which by *renouncing* may free her from all the *community* debts. If the widow accepts the community by any act she binds herself individually for one-half the community debts. For more than this Mrs. Randolph could not be bound.

After Mr. Randolph's death it is shown that Mr. Stark was the instrument through whom payments were made both for Mrs. Randolph and Mrs. Stark. Mr Stark, it will be seen, had no particular interest to examine the legal effect of the mortgage in order to relieve Mrs. Randolph, but as the mortgage was made before his marriage with Miss Lambeth, he might have continued in the same error of law as the gentle, uninformed and trustful Mrs. Randolph was. He gave her no information on the subject. An examination of the studied receipts given and drafted by Mrs. Rhea's agents for payments will show. They took care to dictate to the unsuspicious [illegible] dolph what they wanted. On P. R. 105 is a power of attorney sent three or four hund[illegible] the country for her to copy and sign. It w[illegible] intended to make Mrs. Randolph ratify the void note, but *to recognize Mrs. Rhea* as the sole heir of Rhea. On P. R., pages 143 and 144, is the counterpart, and the court, by comparing the two, will see how it was accomplished, and by looking on the next page what use was made of it, and no doubt under the belief that it was a ratification valid in law. A partition of the plantations was made in January, 1873, a portion of Leinster plantation falling to her in 1873. P. R. 42.

## Mrs. Randolph's Position Under the Facts of the Case.

Mrs. Randolph having subsequently mortgaged her property, it was sold at sheriff's sale March 1, 1884.

The mortgage of 1st of January, 1868, was absolutely null and void and was incapable of ratification, except by some act *with full knowledge* of its defects equivalent to its creation.

That Mrs. Randolph was by the act of administering her husband's estate after his death (if at all) only bound for one-half of her husband's one-half of the debt, viz.: one-fourth the debt, and she has overpaid $5360.25.

That if Mrs. Randolph could be held for her virile share on the face of the note and a valid mortgage even with a person *sui juris* could be created to that extent she has overpaid $3799.23.

The husband being absolutely bound for the community, it leaves the wife at liberty to renounce it, though things are bought in her name.

In Davidson vs. Stewart, 10 L. R. 147, Mrs. Stewart *bought a tract of land in her own name* assisted by her husband. Neither the promissory note nor notarial mortgage (the court held) bound her.

In the case at bar Mrs. Randolph was not separate in property from her husband, as we have seen. She was not authorized by the judge to enter into the agreement according to law. See Rev. Stat. 1856, Philips, p. 560, verbo Women, Secs. 2 and 3; Rev. Code, Arts. 127, 128.

There is, therefore, no presumption against the wife, and the note and mortgage *make no proof in themselves.* Wiley vs. Hunter, 2 An. 806.

Such a note could not even bind the wife in the hands of an innocent holder. Sprigg vs. Bossier, 5 N. S. 54.

The payment of money into a wife's hands does not bind her. Brandegee vs. Kerr, 7 N. S. 67.

The acknowledgments of the wife in the instrument itself can not avail the creditors as proof. Prudhomme vs. Eden's Adm., 6 Rob. 65; Chauviere vs. Fliege, 6 An. 56; Pascal vs. Sauvinet, 1 An. 428; Erwin vs. McCalop, 5 An. 173; Provost vs. Provost, 5 An. 572; Beauregard vs. Eimer, 7 An. 293; Pilcher vs. Ken, 7 An. 144; Bowles vs. Turner, 15 An. 353.

A judgment may be set aside. Barnes vs. Maynard, 15 An. 628; Conrad vs. LeBlanc, 29 An. 123, 124.

The court looks through all disguises to protect the wife and her property. Theriot vs. Voorhies, 12 An. 853.

This list of authorities might be greatly extended.

But the Civil Code is sufficiently clear and needs no explanation to be understood.

"Art. 2362. The paraphernal property which is not administered by the wife *separately* and alone is to be considered under the administration of the husband.

"Art. 2363. When the paraphernal property is administered by the husband, or by him and the wife indifferently, the fruits of this property, whether natural, civil, or the result of labor, belong to the conjugal partnership, if there exists a community of gains."

* * * * * *

Property bought by husband for use of plantation is his. Hall & Lisle vs. Wyche, 31 An. 734; Smith vs. White and Husband, 32 An. 1033; Chaffe & Son vs. McIntosh, 36 An. 826, 827.

The court below while admitting that the debt was only a community debt considered that it was ratified by Mrs. Randolph and held her for one-half of the original debt and interest.

The counsel for Groves in effect contended in the lower court that it does not matter whether Mrs. Randolph was originally bound for the debt or not, no matter whether she had paid for the property to the proper owner its full

value or not; no matter whether she ever received any consideration for it or not, she had signed papers which bind her to pay *six thousand dollars more*, for it is her money which is claimed by the Groves made by selling her land under another mortgage by another party.

It is clear that if there was originally no mortgage binding on Mrs. Randolph during the marriage, then the burden of proof is on the Groves to show that a new mortgage has been created in some way, for in the forcible language of the Supreme Court of Louisiana: "For extinct obligations there is no resurrection. New ones may be created, but the dead rise not again."

Bank vs. Cage et als., 40 La. An. 141, 142.

Hill vs. Hall, 4 Rob. La. 416.

LeBeau vs. Glaze, 8 An. 474.

The case as against Mrs. Randolph is utterly *devoid of equity*.

The mortgage did not bind her.

The law required the property to be administered as belonging to the intestate and turned into money.

Mrs. Randolph gave the price to the estate and was obliged to charge herself in her account as administratrix, and she paid it all out and more besides.

Privileged creditors had the highest claims on the money.

Code 1825, Art. 3153.

Code 1870, Art. 3186.

Here then the Rhea heirs claim that Mrs. Randolph, who paid the Randolph estate the full value of Randolph's interest in all the property they sold, should also not only lose the price but pay thousands of dollars more under a void mortgage.

## IGNORANCE OF THE LAW.

Under the Louisiana law error of *law*, like error of fact in other States, vitiates contracts. And this affects every

contract and is an element of its validity or invalidity. Civil Code of 1825: "Art. 1840. *Error of law* as well as "error of fact invalidates a contract where such error is "its only or principal cause, subject to the following mod- "ifications and restrictions:"

This case, it will be seen, even had Mrs. Randolph been a *femme sole*, is not affected by any limitation of the rule.

In the Roman law the principle did not apply to any but country people, soldiers and the ignorant. But the principle has been consecrated by the Civil Code of Louisiana.

The syllabus in the case of Tanner vs. Robert, 5 Martin, New Series, 225, shows the relief granted a widow against a renunciation (an instrument in solemn form) made under error of law is as follows: "If a widow renounces her rights under a will [under] the idea that she is entitled to one-half of it in *her own* right, and it afterward appears that she was in error as to the extent of her claim, the renunciation does not bind her." 5 Martin, N. S., 225. The grounds of the conclusion are fully stated in the opinion.

The case of Barthet vs. Andry, 14 L. Reports 30-33 (A. D. 1839), where the promissory notes given for land were erroneously supposed to be obligations *in solido*, and new notes *in solido* were given, one of the original joint obligors was sustained in his action to recover back the overpayment, is a case which will throw a flood of light on this case.

Barthet vs. Andry, 14 L. R., 30 to 33.

See, also, Lyon vs. Orleans Navigation Co., 2 L. R., 199, bottom of page.

The doctrine is fully recognized in Wildering vs. Haker, 35 La. An. 1182.

See, also, Harang vs. Blanc, 34 An. 635.

The appearance of the Rhea mortgage on the mortgage

record, and mentioning it in the sheriff's deed, does not prevent the true owner from claiming the proceeds.

The Supreme Court of Louisiana says: "It has fre- "quently been held that in judicial sales the amount of "such mortgages, assumed by the purchaser, as turned "out *not* to be due, enure to the benefit of the defendant "in execution. We consider the principle elementary."

Demeret vs. Hawkins, 8 An. 483. The subsequent mortgagee will take her place.

### There Was No Ratification.

But after the previous showing it ought not to be necessary to proceed further.

The decree appealed from by the Rhea heirs instead of erring in favor of defendant Randolph erred against her in the sum of $5360.25, by holding that Mrs. Rhea had ratified the void mortgage and was bound for one-half of the original debt.

There can be no ratification unless the party ratifying knows the defects in the instrument he ratifies. Any suppression of the facts or seeking to keep a party in ignorance of her rights by preparing papers to be signed by her as if she was bound will not avail.

The following is the law of Louisiana as to ratifications when the contract is not absolutely null, as it is in our case.

"Art. 2252. The act of *confirmation or ratification* of an obligation against which the law admits the action of nullity or rescission is valid only when it contains the substance of that obligation: the mention of the motive of the action of rescission and the intention of supplying the defect on which that action is founded. In default of an act of confirmation or ratification it is sufficient that the obligation be VOLUNTARILY EXECUTED subsequently to the period at which the obligation could have been validly

confirmed or ratified. The confirmation, ratification or voluntary execution in due form and at the period fixed by law involves a *renunciation* of the means and exceptions that might be opposed to the act, without prejudice, however, to the right of persons not parties to it."

There is the same reason that the party partly *executing* the contract should know the defect in it as in *a written* instrument in which the defect must be specially mentioned in order to make the instrument valid. So it is held that there can be no *voluntary ratification* by execution unless the party knew the defect and intended to execute it notwithstanding.

From the foregoing it is seen the power of attorney and the written receipts are invalid, because the invalidity of the mortgage was not set out in the power of attorney relied on by our adversaries as the *instrument* of ratification.

As to a ratification by execution of the contract it must be (it is settled law), a *voluntary* execution; that is, an execution with a knowledge of the defects in the instrument.

It does not seem to us that the length of time the deception is kept up adds any merit to the transaction, or should in any way benefit the party who is so adroit.

The law on this subject is very clear.

The French decisions are numerous on the corresponding article.

Dalloz, in his great work, Code Civil Annoté, gives the following digest, viz., Vol. 2, p. 100, Translation, No. 119: "The voluntary execution of an act does not import a renunciation to avail against nullities (vices) which can affect it only inasmuch as it is proved that the execution has had place with the knowledge of the (vices) nullities and with the intention of curing them." Here follow fifteen or twenty decisions.

See page 100, same work, Translation, No. 120: "It

" will not be sufficient for a ratification if the author of " the voluntary execution might have been able or ought " to have informed himself of these nullities, or if indeed " the controversy concerned apparent nullities." Civ. C., 29 Juill., 1856, D. P. 56, 1, 292.

The following quotations from the high authority of Laurent, which have been sanctioned and approved by a recent decision of our Supreme Court, will explain the doctrine and the reason:

No. 621. "What are the conditions required for a " valid cofirmation of the execution? The law says that " the execution should be *voluntary*, and it adds that the " obligation should be executed after the epoch in which " the obligation could have been validly confirmed. What " is *voluntary* execution? The word *voluntarily* is also " found in another disposition which speaks also of the " execution of an obligation, and which produces an " estoppel against the one who has executed it. The " meaning of Article 1235, that which has been paid " without being due is subject to a repetition, but the " repetition is not admitted with regard to the natural " debts which have been *voluntarily* paid." 18 Laurent, p. 632.

" What means this word *voluntarily?* In the Article " 1235 (C. N.), it is hardly doubtful, the law does not " *expressly* reprobate the payment which had been made " under the empire of violence. This was useless *to state*, " as it is the result of general principles."

" The debtor of a natural debt pays the debt *voluntarily* " in this sense, because he knows that it is a natural debt, " and he pays it knowing that he can not be compelled " to pay it."

" We think that in the case of Article 1338, the word " *voluntarily* has an analogous sense. He who executes " an obligation which is null, does he intend to confirm

" it? Yes, *if he knows that the act is null*, and if not-
" withstanding he executes it; one could not compel
" him; he could oppose a peremptory exception to the
" creditors, so he executes knowing that he is not bound
" to execute that which implies the intention of renounc-
" ing the action of *nullity* as well as the exception of
" *nullity*."

"To execute *voluntarily* is therefore to execute with
" intention of confirming."

622. "In general, another sense is given to the word
" *voluntarily*. The consent, so it is said, should be ex-
" empt of all vice that is evident; but it is too evident to
" make it necessary to state it. In fact, to confirm is to
" show the desire to renounce the action of nullity; there-
" fore, all *voluntary* manifestation of the will is vitiated by
" the *causes which vitiate the consent;* therefore, the
" confirmation also is null when *it has place by error*,
" when it is extorted by violence or surprised by fraud."

" It is the common law, and what good is it to repro-
" duce a principle of common law for a tacit confirmation?
" If the execution is vitiated by fraud it is null, and how
" could an act which is null confirm another act which is
" also null? One would have to begin by confirming the
" confirmation; certainly it was not necessary to say that
" an act null by fraud could have been confirmed by an
" execution which itself is the fruit of fraudulent manœu-
" vers."

" It is also stated that the execution is not *voluntary*,
" and therefore is not the equivalent of a confirmation
" when the debtor has done acts of performance in order
" to stop the pursuits of the creditors; this explanation is
" nearly our own; to state it more clearly it is one of the
" consequences of the principle that the execution can
" not avail (amount to) a confirmation only when it im-
" plies the intention to renounce the action of nullity,

" therefore it can not be supposed that such is the inten-
" tion of the debtor, who wishes *to prevent or arrest the*
" *pursuits of his creditors;* since the facts can receive
" another interpretation than that of the desire to renounce,
" the renunciation should not be admitted. This is the
" common law" (of France).

623. " There is still another interpretation of the word
" *voluntarily*. The acts which are the necessary conse-
" quence of the agreement in this sense, that the debtor
" could not withdraw himself from it, is not a *voluntary*
" execution, says Duranton, and does not import with it
" a tacit confirmation. The purchaser gives notes to
" order in payment of the price; the vendor endorses
" them to a third person. If the purchaser pays the
" notes, will it be said that he voluntarily executed the
" sale? No, because he is obliged to pay the note at its
" maturity to the third holder. It is therefore an execu-
" tion which does not imply the wish to renounce his
" rights. That is certain; it is a consequence of our
" principle, and of the interpretation which we give to
" the law; actual execution does not suffice; it is neces-
" sary that *the intention*, that is to say a fact which
" reveals the intention of the one who executes, and a
" fixed intention for these renunciations is not presumed.
" It is for the judge to discriminate the *intentional*
" fact from the *material fact*. It is said that the minor
" of age who delivers immovables which he has sold,
" while a minor, does not *voluntarily* execute, because
" the delivery is dependent upon the act of sale. *Du-*
" *ranton* answers with reason that it is also with all *facts*
" *of execution;* we must always return to the principle,
" *that the fact should manifest the intention* to confirm;
" it is in this sense that it ought to be *voluntary*." Vol.
18, p 634, No. 623.

Our Supreme Court in the latest decision, after making large quotations from the preceding part of Laurent, ap

provingly proceeds (39 An., p. 246, in the case of Breaux vs. Sarvoie) as follows, viz.:

"Larombiere says that, as the acts from which confirmation or ratification is sought to be deduced have no value otherwise than as *indicia* of the intention on the part of him from whom they emanate, that intention can be inferred only from a voluntary execution which must be enlightened, reasoned and exempt from all error. (Vol. 4, p. 625, No. 35, Sec. 3.) A simple demand for time to pay, or an offer to which has not been accepted, and which could be withdrawn, can not be considered as acts constituting a voluntary ratification. (*Ib.*, p. 634, No. 45) *Zachariæ, after saying that the voluntary execution must rest on unequivocal facts*, concludes that in case of doubt, the act is not to be deemed ratified." Vol. 2, No. 421, p. 384.

"*As to the character of the fact or act invoked as a confirmation or ratification, the jurisprudence of this State gathered from the following authorities is to the same effect, namely: That the acts from which the ratification of a contract is sought to be deduced must evince such intention clearly and unequivocally.*"

"None will be inferred where those acts can be otherwise explained." Rivas vs. Berhard, 13 L. 175; Bennett vs. Bennett, 12 An. 254; Copeland vs. Miskie, 17 La. 293; 11 M. 615; 3 An. 230; 15 An. 569.

"We deem it unnecessary to quote from those decisions, as the facts are not identical but simply kindred to those presented in the present controversy. The propositions of law announced may be considered as general in terms, though applicable to a considerable extent to the contentions now before us." Breaux vs. Sarvoie, 39 An. 246, 247. (March, 1887.)

It is therefore clear, that so long as Mrs. Randolph was uninformed as to her rights, there could be no ratification. See quotation of French interpretations of the case.

Again, the payments made in error by Mrs. Randolph, so far from being ratifications can be recovered back. C. C., Arts. 2303, 2305, 2310. Syllabus to Barthet vs. Andry, 14 L. R. 30, is in these words:

"So where purchaser, supposing himself bound *in* "*solido*, when he was only jointly liable with others, "made a contract for the payment of the whole claim "under this belief, held that it was an error of law and "he was entitled to relief." See also Ligon vs. Orleans Navigation Co., 2 L. R. 128; 39 An. 246; Sprigg vs. Boissier, 5 N.S. 54 and 55; Spring Co. vs. Knowlton, 108 U. S. 49.

As the legislation on this subject is explicit and positive, it is not necessary to cite further authorities.

This high court has said in the exhaustive opinion in the case of the Town of Bloomfield vs. Charter Oak National Bank, 121 U. S. Rep. 121, page 872 of 7th Sup. Court R., that any ratification of an act "previously un- "authorized must, in order to bind the *principal, he with* "*full knowledge* of the material facts."

In Crosby vs. Buchanan, 23 Wall. 454, the Supreme Court of the United States says:

"This brings us to the case upon its facts. The record "is voluminous, but to our minds the controlling facts "are few. In a court of conscience deliberate conceal- "ment is equivalent to deliberate falsehood. When a "living man speaks in such a court to enforce a dead "man's contract with himself against parties who he "knows are ignorant of the facts, he must be frank in his "statements, unless he is willing to take the risk of pre- "sumptions against him."

The authorities cited by the Groves heirs are not in conflict with these uniform rules of the Supreme Court.

The case in 33 An. 662, Lafitte vs. Delogny, was a case where the widow mortgaged the property to her son as

her own and allowed a judgment by default to go against her after the action of nullity was brought (p. 662). But the court in allowing the ratification to stand says: "We "have stated expressly that where there is such a want of "ratification, *or where* its nullity *is invoked, the contract* "*can never be said to have existed at all, but is void ab* "*initio*" (33 An. 667; see same vol. 164 and 1008). In the present case Mrs. Randolph was incapable of buying the property (the mules and plant cane), making it her own. It belonged to the community, and it was sold by the community and by her bought from the community by a decree, and incapable by any ratification of the widow, there being minors, of being made the property of any one else than the community. The title could only pass, as we have seen, by a sale or an adjudication.

The Penny Case, 14 An. 194, is no better for the appellants.

If the court will examine the first page of the opinion (p. 194), it will see that the estate was held bound for the sugar house, saw-mill, etc., built on Mrs. Penny's plantation.

All other debts, except those contracted by her after a separation of property, were rejected. It was held that Mrs. Penny was incapable of contracting to pay the Scott note. See p. 197, 14th An.

Under our law the wife can not buy any property, movable or immovable, during the marriage, not even with the consent of her husband, on a credit, so as to make it her own and take it out of the community. Neither can the husband buy it in his name so as to make it his individual property. The law is *inexorable*.

The only way is where the wife has paraphernal funds in her own hands and exchanges them at the time for property, and in the act of sale the circumstances are set

forth, and it is specially declared that the purchase is made for the purpose of reinvesting her paraphernal funds.

No one pretends that any such thing occurred in this case, where Capt. Randolph administered the separate property of the wife. The positive law makes all such purchases community. R. C. C., Arts. 2402, 2398; Code of 1825, Arts. 2412 and 2371; Glaze vs. Sheriff, 40 An. 694, 696.

The party who pretends to the contrary must prove the facts from which an exception to the general rule can be established. Graham vs. Eagan, 13 An. 546.

The property shown by the public inventory of C. M. Randolph's estate was all Mrs. Randolph *ever acquired* of the property sold by Mrs. Rhea to her husband.

Including the $4500 of the rent, over *eighteen thousand* dollars were paid the Rheas.

Part payment of what is claimed but not due does not bind party to pay more. Camp vs. United States, 113 U. S. 648.

*The law of Louisiana presumes that the payments were made by Mrs. Randolph in the capacity in which she was bound, and not otherwise.*

This is settled in Saloy vs. Chexnaidre, 14 An. 567, 568, where the attempt was made to apply the widow's money to the whole debt of the community, as is attempted here, and the court declare that her payments must apply to her own share of the debt. This case is affirmed in 29 An. 721, and 36 An. 117.

Taking the Louisiana law as covering this case, as we think it does (91 U. S. 452, and 103 U. S. 289), it leaves an overpayment in July, 1876, of $226.34, and a total overpayment of $5360.25.

NOTE.—This table is taken from brief in the lower court, and reference to the pages of the testimony has not been corrected.

| | |
|---|---|
| Payments made by Mrs. Randolph on joint note of F. B. Randolph, C. M. Randolph and Dora Lambeth, as it appears on its face, to Mrs. R. Rhea, viz: | $8,970 12 |
| April, 1870, Stark's evidence, p. 17 | $500 00 |
| " 1870, " 2 drft., p. 18 | 2,500 00 |
| " 28, 1873, Stark, through Nalle & Cammack | 2,000 00 |
| | $5,000 00 |
| Mrs. Randolph's one-half | $2,500 00 |
| April, 1875, Stark's evidence, 18, Mr. R. 2 | 400 00 |
| July, 1876, " " 18, 2 | 1,500 00 |
| (Overpayment $226.34.) May, 1877, Stark's evidence, 18, 2 | 780 00 |
| May, 1878, Stark's evidence, 18 2 | 428 29 |
| July, 1879, " " 18 and 19, 2 | 646 00 |
| October. 1879," " 19 3 | 501 91 |
| April, 1880, credited on note as paid Sentell $1000, one-half | 500 00 |
| November 26, 1881, Mrs. R., p. 3 | 389 84 |
| 1882 and 1883 interest paid for two years on the note, one-half Mrs. R. (see note) | 389 84 |
| | $8,035 88 |

Total overpayment, $5360.25.

In Louisiana a person can not bind himself (except in certain solemn forms) without consideration. C. C., Art. 1887; Code 1870, Art. 1893.

"An obligation without a cause or with a false cause or unlawful cause can have no effect."

While Art. 1893, R. C. C., declares the nullity of such acts, the following article defines what is meant. R. C. C. Art. 1896 (1890): "By the cause of a contract in this "section is meant the consideration or motive for making "it; and a contract is said to be without cause whenever "the party was in error, supposing that which was his in-"ducement for contracting to exist, when in fact it had "never existed, or had ceased to exist before the contract "was made."

It is not pretended that any new consideration was given by the Rhea heirs to Mrs. Randolph, and at common law also every one of these pretended acts are void for want of a consideration, no matter in what language they are conceived. There can be no talk of "ill grace" where a party is defending herself from a great injustice, impo-

sition and wrong. The multiplication of void acts *ad infinitum* will not make a good one, which law, much less equity, can enforce. Adams' Equity 188. Mrs. Randolph bought the property of the community at a cost of, say, $2030.64. She has overpaid her indebtedness arising from her acceptance of the community by $5360.25, making total payments $11,735 for a few mules and property which Rhea's counsel, on page 19 of his first brief, lower court, said amounted to nothing.

It was urged in the lower court that a mortgage operated against the property as an indivisible debt. We reply, that there must be a *valid mortgage* before any thing can be bound. And in this instance Mrs. Stark only was bound for her share by the mortgage; the property has been divided by partition, which the Rhea heirs recognize by claiming the proceeds of the sale of Mrs. Randolph's property as such, and are therefore estopped from claiming the contrary.

Moreover, the Rhea heirs having allowed their mortgage against Mrs. Stark to be prescribed (barred by limitation), they are unable to subrogate their pretended debtor to their pretended rights against Mrs. Stark, which they have lost.

All of which is respectfully submitted by

E. T. MERRICK, SR.,
*Counsel for Mrs. Randolph, Appellee.*

FILED,
MAR 3 1894
JAMES H. McKENNEY,
CLERK

# SUPREME COURT OF THE UNITED STATES.

No. 278.

OCTOBER TERM, 1893.

MARTHA GROVES ET ALS.

*versus*

GEORGE W. SENTELL ET ALS.

*Bill of Interpleader.*

E. M. HUDSON,
*Counsel for G. W. Sentell, Complainant and Appellee.*

L. GRAHAM & SON, PRINTERS, 44-46 BARONNE ST.

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STATEMENT.

By a notarial act of May 15, 1875, Mrs. Fanny B. Randolph gave a mortgage on certain lands to secure a certain indebtedness due by her to Johnson & Goodrich (R., pp. 32 to 35).

Subsequently, by another notarial act of June 2, 1875, G. W. Sentell & Co., in liquidation (a firm composed of G. W. Sentell and Benjamin Conyers, both then living), became the purchasers and owners of the above mortgage from Johnson & Goodrich (R., pp. 35 to 38).

There existed, at the time, of record a first mortgage on the lands described in the above act of mortgage and on other lands in favor of Mrs. Rosetta Groves, widow of John Rhea, for $8970.12 (R., pp. 39 to 41). Thus G. W. Sentell & Co., in liquidation, became the owners of a

*second* mortgage on part of this property, which part, by an act of partition between Mrs. Randolph and Mrs. Stark, of January 9, 1873, was transferred to Mrs. Randolph (R., pp. 42 to 46).

On October 29, 1883, G. W. Sentell and William B. McLean, testamentary executor of Benjamin Conyers, who had died since the acquisition of this mortgage from Johnson & Goodrich, sought to enforce the same by suit (R., pp. 50 to 53). After judgment the property mort gaged was sold by the sheriff under a writ of *fieri facias*, and was adjudicated to G. W. Sentell individually (R., pp. 64 and 65, sheriff's return). There being the prior mortgage of Mrs. Rhea recorded against this property, as well as other lands, extant, the purchaser retained in his hands the amount of the prior mortgage as set forth in the sheriff's return, and paid over to the sheriff only the *surplus* of the price (R., pp. 30 and 31, sheriff's deed).

Later, on April 1, 1886, the heirs of Mrs. Rhea instituted suit against G. W. Sentell, the purchaser, for the amount by him retained at the sheriff's sale to satisfy the prior mortgage recorded in favor of Mrs. Rhea. This suit was instituted in the Circuit Court of the United States for the Eastern District of Louisiana, on the law side, and bore the docket No. 11,293. (R., pp. 46 to 48).

Thereafter, on April 9, 1886, Mrs. Fanny B. Randolph gave notice to G. W. Sentell that she claimed the money retained in his hands, and not to pay to the Groves, notwithstanding their suit No. 11,293 (R., p. 49).

Then, on May 1, 1886, William B. McLean, who had previously become the sole liquidator of the old firm of G. W. Sentell & Co., and was the executor of Benjamin Conyers, gave notice to the same effect and claimed the identical funds in the hands of Sentell (R., p. 50).

It then being found impossible to reconcile conflicting pretensions to this money and to effect any arrangement

with the three several claimants of the same, on May 29, 1886, G. W. Sentell filed a bill of interpleader in the Circuit Court against all the claimants, deposited the fund in the registry of the court and obtained a restraining order against all parties claiming the fund (R., pp. 1 to 4). Subsequently, after a hearing and argument contradictorily, an injunction *pendente lite* was granted.

ARGUMENT.

The bill of interpleader, it is respectfully submitted, presents a complete case for the relief sought. The complainant claims no interest in the fund; he sets forth the conflicting claims of the several defendants; he shows that he can not pay to one without being liable for the same sum to one or all the others; and thus his own right to compel them to interplead, so that the court may decide to whom the fund belongs. The proper affidavit of no collusion is annexed to the bill, and the fund in dispute is actually deposited in the registry of the court. And thereupon the order of the court on the bill was obtained (R., p. 5).

To cite to this honorable court the innumerable decisions establishing the elementary principles and rules of law applicable to interpleading appears to be wholly unnecessary.

It may be pertinent, however, to direct attention to a question of law peculiar to Louisiana. The Code of Practice of Louisiana, in Art. 706 (Act No. 98 of the General Assembly, approved March 14, 1870, and known as the Revised Code of Practice), reads as follows: "But when the property sold is subject to privileges or special mortgages in favor of other persons besides the suing creditor, the sheriff shall require from the purchaser, and he shall be compelled to deliver to the creditor, whether the sale be made for ready money or on credit, only the surplus of price beyond the amount of the privileges or

special mortgages, if there be any surplus." This has uniformly been construed to *require* the purchaser to retain in his hands the amount due for prior special mortgages and privileges, to pay such prior secured debt when demanded by the creditor entitled to the same. Thus will become manifest the *reason* why the complainant did retain the sum, now claimed by the several defendants, when he became the purchaser of the property sold under execution (R., pp. 30-31, sheriff'sdeed).

Again, the complainant was a partner formerly in the partnership of G. W, Sentell & Co., which for years has been in liquidation, and of which W. B. McLean was sole liquidator, as well as executor of the deceased partner, B. Conyers, before the filing of the bill herein. But by reason of that former partnership the complainant was not and is not the owner of any of the partnership property. In Louisiana and under the civil law a partnership is a civil *person*. The partners are not the owners of the partnership property. The ideal being, the civil *person*, is the owner; it has a right to control and administer the property, to enable it to fulfil its legal duties and obligations. It is only in the event that, after liquidation, some residuum may remain, that the partners may have some interest in that residuum—a result that can never be ascertained till after a complete liquidation. A full discussion of this law of partnership, as a *person*, will be found in 3d La. Annual R., pages 321 to 323, in the case of Smith vs. McMicken; and this case is later cited, with approval, in the case of the Succession of Pilcher, 39 La. Annual R., page 365. No question was raised in this respect in the progress of the cause before the Circuit Court, the law being well understood by all the parties there. But the civil law has been referred to in order to meet even a suggestion in that respect.

In the answer to the bill by the appellants, Groves, there is an allegation that the defendants, Groves, "believe

same" (*i. e.*, notice given to complainant by W. B. McLean, liquidator and executor) "was instigated by complainant," etc. This averment, following complainant's affidavit of no collusion, annexed to the bill of interpleader, certainly justified the assumption that some effort would have been made to show the reason for the *belief* that was in those defendants. The record will disclose the fact that no attempt whatever was made to establish that averment, as, indeed, none could have been successfully essayed.

On behalf of the complainant, appellee, we submit respectfully that the judgment of the Circuit Court maintaining the bill of interpleader should be affirmed. With the judgment as between the several defendants the complainant is in nowise concerned.

E. M. HUDSON,

*Counsel for G. W. Sentell, Complainant and Appellee.*

FILED.
MAR 8 1894
JAMES H. McKENNEY,
CLERK.

# SUPREME COURT OF THE UNITED STATES.

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MARTHA GROVES ET ALS.

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BRIEF IN BEHALF OF W. B. McLEAN, LIQUIDATOR, APPELLEE.

EDGAR H. FARRAR,
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ERNEST B. KRUTTSCHNITT,
*Counsel for W. B. McLean, Liquidator, Appellee.*

T. H. Thomason, Print. N. O.

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This cause is so fully stated in the briefs for G. W. Sentell, who filed the bill of interpleader, and the brief of Mrs. Fanny B. Randolph, one of the defendants, that it is unnecessary to re-state the matter here.

The Court will notice that Martha Groves and others are the only appellants from the decree, and unless there is error in this record to their prejudice, the decree must be affirmed.

A large portion of the brief of Mrs. Fanny Randolph is taken up with showing that the Court erred against

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A large portion of the brief of Mrs. Fanny Randolph is taken up with showing that the Court erred against

her in declaring that there was anything due the appellants on their debt. It is fruitless to discuss that matter now, as she is not an appellant from the decree.

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ARGUMENT.

I.

What is known as the Rhea note, executed by Mrs. Randolph and her sister, Mrs. Stark, was in the following form:

"AVOYELLES, LOUISIANA,

"$8970.12. Leinster Plantation, January 1st, 1868.

"Two years after date we promise to pay to the order of Mrs. Rosetta Rhea, at the Citizens' Bank of Louisiana in the City of New Orleans, eight thousand nine hundred and seventy 12-100 dollars, for value received, with interest at the rate of eight per cent. per annum from date until paid. Not negotiable.

(Signed) FANNY B. RANDOLPH,
" C. M. RANDOLPH,
" DORA LAMBETH."

By referring to the act of mortgage, executed by the parties to secure this note upon the Leinster Plantation, which was owned jointly by Mrs. Fanny Randolph and Mrs. Dora Lambeth, wife of Stark, it will appear that the signature of C. M. Randolph to this note, who was the husband of Mrs. Fanny Randolph,

was merely for the purpose of authorizing her as a married woman to sign. This note, on its face, by the principles of commercial law as applied in Louisiana and elsewhere, is a joint note and not a joint and several note. See Mayor of New Orleans vs. Ripley, 5 Louisiana, 120.

There was nothing in the circumstances under which the note was given to create anything but a joint liability. The note was given by the two owners of a plantation for the joint purchase of certain personal property on the plantation for the benefit of the plantation which they jointly owned. Being a joint obligation, each of the obligors was bound only for his virile share, and Mrs. Fanny B. Randolph was therefore bound only for her half of the note.

The terms of the mortgage given to by the parties to secure this note do not expressly or impliedly extend the obligation from a joint to a joint and several obligation, and a mortgage being a mere accessory to the debt, each person mortgaged his interest in the plantation to cover his liability, and no more.

There is nothing in the mortgage, or in the circumstances under which the mortgage was given, from which any suretyship for each other could be presumed, and nothing by which Mrs. Randolph bound herself or her property for Mrs. Stark's share of the debt, or Mrs. Stark bound herself and her property

for Mrs. Randolph's share of the debt. Therefore, the mortgage given by Mrs. Randolph, though stipulated in the same act as the mortgage given by Mrs. Stark, bears, only so far as her share of the indebtedness is concerned, upon her share of the property.

On this point the cases of Walton & Kemp vs. Lizardi, 15 Louisiana, 588, and Erwin vs. Greene, 5 Robinson, 70, are absolutely conclusive.

II.

By the effect of the partition made between Mrs. Randolph and Mrs. Stark, of the plantation, to secure the Rhea note, Mrs. Randolph's mortgage was confined to her half of the property, and Mrs. Stark's note was confined to her half of the property, and all payments made by Mrs. Randolph upon the note reduced, *pro tanto*, her liability thereon.

The Master, in his report, has given in detail the payments made by Mrs. Randolph on this note, showing that there remained, at the date when the bill of interpleader was filed and the fund was deposited in court, the sum of six hundred and two 14-100 dollars ($602.14), and for this sum the court below entered a decree in favor of the appellants. There was not any attempt made in the court below to attack the computation of the Master, and none can successfully be made, as every item of payment, stated in his report,

is confirmed by the evidence, and the evidence on that subject is not in any manner conflicting.

III.

The claim of the appellant that G. W. Sentell, who filed the bill of interpleader, had assumed the plaintiff's debt to the extent of the amount retained in his hand, is utterly without any foundation in law, or in fact. He was obliged to pay the amount which he retained in his hand to whoever was entitled. Article No. 207 of the Code of Practice required him, as the purchaser at a public sale, to retain in his hands the price bid by him at the sale to cover all liens, privileges and mortgages upon the property which were prior in rank of registry to the claim under which the property was sold; that is all that Sentell did. He and the sheriff were required to go by the record in the Mortgage Office, showing what liens were recorded against the property. None of those lien holders were a party to the suit of Sentell & Co. against Mrs. Randolph, or to the execution under which the property of Mrs. Randolph was sold. The fund in Sentell's hands was retained by him as purchaser to hold him harmless from such claim of lien; and by the payment into court of the sum so retained by him, he was relieved of any obligation whatever by virtue of his purchase; and the lien holders and the debtor of